PERSONAL AND PROFESSIONAL REMINISCENCES OF AN OLD LAWYER

JOHN A. PITTS

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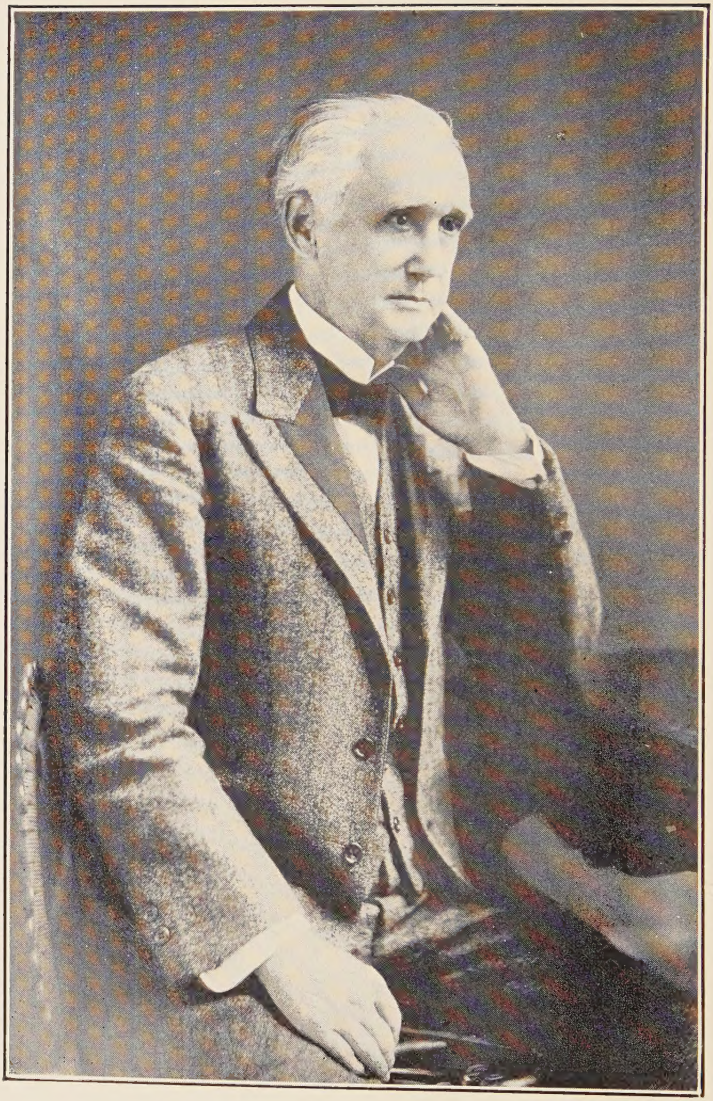

Yours Truly,
Jno. A. Pitts.
(Aetat 81)

Personal and Professional Reminiscences of an Old Lawyer

John A. Pitts

1930

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SOUTHERN PUBLISHERS, Inc.
KINGSPORT, TENNESSEE

20000058

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KINGSPORT, TENNESSEE
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DEDICATION

To my numerous living personal friends, young and old, male and female, and to the memory of those who have passed away, without number and without distinction, these rambling reminiscences are affectionately dedicated, in the sincere hope that those who are living may not forget or fail to appreciate those who are dead.

Jno. A. Pitts.

PREFACE BY CHARLES C. TRABUE

The writer of these reminiscences was born in the middle of the last century in a part of Tennessee where conditions were almost as primitive as those that surrounded our first settlers. He grew up a little later within the sound of the guns of Shiloh, and his boyhood was lived in the midst of the Civil War and of the unhappy times that followed it. And then, making the most of the limited opportunities afforded him, he passed on to be first a school teacher, then a country lawyer riding the circuit, and presently to become a prominent and successful member of his profession in the capital city of the state.

Mr. Pitts has for sixty years been a lawyer, and yet there is but little in these pages of his own legal career or of the cases he has tried or the victories he has won. They are rather his random observations of incidents and surroundings, sometimes in no way notable, but which all the better for that reason reflect the life of the times. They are in that sense a contribution to the history of Middle Tennessee, and, counting that history from the settlement of Nashville in 1780, cover more than one-half of the period.

Some of these recollections are almost like a voice out of the past, the story of an eyewitness of things intimate and homely in their nature that were

a part of the life about him fifty and even seventy-five years ago. They illustrate, too, certain notable qualities of the writer, his unusual memory, reaching back even into slave days, which now seem so far away, and his great industry, for it is no figure of speech to say that these papers were written *currente calamo.* All of his life Mr. Pitts has written out his pleadings, his briefs, all of his papers, in his own hand, in fine, big, bold Spencerian letters, and in his eighty-first year with unabated zest and industry he has by way of recreation in the same way written out these memoirs. As someone has said: "The fingers which have once grown accustomed to a pen soon itch to hold one again; it is necessary to write if the days are not to slip emptily by."

The incidents of a man's life, of its little events and contacts, reflect the story of the times in which he lived and the community in which he moved. History as commonly understood deals with nations and states, the larger political units, but the story of a village has an intimate and human character that, albeit to a smaller audience, is often even more absorbing. And it is so when one who has lived a long life in a community sets down some of his memories of people and places. Indeed, if one should wish to know something of the people in the rural parts of Tennessee forty or fifty years ago, before the telephone and the automobile and the radio, he could find this nowhere better portrayed than in the recollections of a country doctor or of a circuit riding lawyer of those times.

Mr. Pitts has added to his reminiscences of places and events his estimate of many of Tennessee's appellate judges and other notable men whom he

knew over the last sixty years. He has written only of those who are now dead. These comments are made with kindliness but not without discrimination. Members of the bar will best be able to weigh the justice of these character sketches, and there will, of course, be differences of opinion, but Mr. Pitts' long and active professional life and his wide contacts with the courts will give their proper weight to the opinions that he expresses.

One does not here get the idea that these judges of fifty and forty and thirty years ago were supermen, but rather that they were on the whole men who sought honestly to administer justice, but with varying degrees of ability and industry, as was true of their predecessors and is true of those judges who have come after them. It is surely a mistake—and one which Mr. Pitts does not make—to conclude too readily that we have lost the virtues of our forefathers. The habit of lamenting "the good old days" has in it something more of pride than of regret. If we are a perverse generation, a common sort (so the theory goes), yet our fathers and grandfathers were of the nobility. "There were giants in the earth in those days." Yet if we stop a moment to think we will realize that our own time which we think so perverse will probably be to our grandchildren "the good old days."

Mr. Pitts has in his latter days enjoyed a dignified ease, which he has well deserved, and which he has happily employed in the writing of these recollections and in the cultivation of his trees and flowers.

June 20, 1930. CHARLES C. TRABUE.

EDITORAL BY EDWARD WEBB IN THE CITIZEN APPEAL, JUNE 27, 1930

JUDGE JOHN A. PITTS

I have had in my mind for some time to write a story, to write the particular story that follows herewith, but each time previously that I have attempted to start it, my own fearfulness that I would not do justice to it, has caused me to defer the effort.

It was one of the things that I meant to write at an opportune hour, and by opportune hour, I mean one of those fleeting periods when one writes, not because he wants to, but because he must; when one prays, not for something to write about, but merely for the time to put down on paper, thoughts that have already marshalled themselves.

Today I received a letter. Before I opened the envelope, I had a hunch as to its contents. Not that there were any misgivings in my mind about it or its contents, but today I knew that I would write that story. I have lived long enough to know that all good things must come to an end and some kind of mental telepathy told me that the end of something was approaching. Here is the letter:

Dear Mr. Webb:

This is the last, but one, of the "Reminiscences." The last one which I will hand in next week, is quite lengthy and you may find it nec-

essary to publish it in two installments. It is a string of "stories" used in legal argument within my memory, which I think should not pass into the limbo of oblivion. They will be interesting I think to your readers. I have arranged to place these "Reminiscences" in the hands of a publisher in July for publication in book form and the book will be out in late summer or early fall.

Your friend truly,
JOHN A. PITTS.

A little more than a year ago, and only a few days after I had joined forces with the Citizen Appeal, I went to Judge Pitts' office in the American Trust Bldg., and falteringly and hesitatingly asked the lady in the outer office if I might have a few minutes' audience with Judge Pitts. When she told me I might enter, my wayward feet were ready to start for the elevator, but a more determined mind succeeded in making them carry me into the inner sanctum, where I met Judge Pitts for the first time. I had known the Judge by sight and by reputation for many years but had never had the opportunity of coming within the circle of his vast acquaintanceship.

The object of my call at this time, was to induce him if possible, to write the "Reminiscences." He welcomed me warmly and in a most courtly manner and invited me to have the chair at the edge of his desk. That I was thrice handicapped in my mission, I fully knew; first, because I was a stranger; second, I knew the Judge to be a very busy lawyer with large interests and an imposing clientele and

doubted if he could or would take the time to concur in my request; and thirdly, I knew the Citizen Appeal was just an infant in the newspaper world and my request would not carry with it any great amount of flattery.

After an hour or more that had swiftly passed, I reluctantly took my departure. The Judge and I had slipped out of harness and wandered afar off. We had discussed literature, art, music, religion, science, politics, law and a few other things. The Judge had shown me his private scrap-book and had given me a good idea into his philosophy of life. With a warm handshake and a merry twinkle in his clear gray eyes, he shifted his stogie to the other side of his mouth and told me he would get me up something in a few days. Thus was born the idea of the "Reminiscences." As the weeks went on and the "Reminiscences" grew, my respect and admiration for the man grew apace. Personal visits exchanged between us, telephone conversations and many letters have thrown in strong relief his rock-ribbed integrity and Christian-like character. I count it as one of the fine days of my life that I was able to make and hold a friendship with a man of Judge Pitts' type.

You, who have read the weekly installments of his "Reminiscences," must surely have been impressed with the vigor of his style of writing, showing an immense and varied reading and a profound study of human nature. What an amazing memory for names, dates, places and associations. How keen the observations of his mind, that after forty, fifty, even sixty years, he can set down faithfully and minutely the little queer quirks of character, the small eccentricities of personal behavior,

even to the oddities of dress and manners of the vast assemblage of characters of bygone years that he has paraded before our view: men who have made Bench and Bar history in this great State of Tennessee, and others who had no particular claim to distinction other than being eccentric characters.

There is something fascinating about the long ago. Time charitably smooths off the rough edges, heals the gaping wounds and smothers in oblivion the hard and mean phases of life. The judges, the lawyers, the witnesses, the farmers and farm hands, men in high places and low, that we have met in the "Reminiscences," have been touched with a certain imagery that makes us regret that we, too, could not have seen and known them in the flesh. With a facile pen, an excellent memory and an inimitable style of humor, the Judge has enshrined his vast assemblage of friends from every walk in life in a halo of romance. The qualities that seem to have most impressed themselves upon his sensitive mind, were the sterling qualities. And out of the voluminous correspondence that has come to this office in the past year from friends, readers and acquaintances of Judge Pitts, and from relatives of some of the men he has written about, not one word has ever been received in which he has been taken to task for any inaccuracy of statement.

Marc Antony said of Cæsar, "The evil that men do lives after them, the good is oft interred with their bones." To have crossed the path of Judge Pitts and to have been numbered among his friends meant a reversal of this truism. He has remembered only the good.

The epitaphs that Judge Pitts has left us of his

hosts of friends are written in shining letters. Some of them had rough and unpolished exteriors, but the Judge saw only the diamond underneath; some labored disadvantageously toward certain ends; the Judge seems to have read their hearts and divined that they purposed rightly; in others born with the silver spoon of circumstance in their mouths and who rode the crest to high places the Judge can find no arrogance or disdain in their make-up.

"As a man purposeth in his heart, so is he." The Judge has just passed his eighty-first birthday. To meet him today, one is impressed with the vitality of his health as well as the vigor of his mind. He has numbered his friends through three generations and I can imagine no greater crowning glory than to have reached four score years and one, in full possession of all faculties and to be able to look back over the long train of years, to sweep up in review the memory of those that have gone, to look within each individual soul and say of him, "I find no fault with this man."

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FOREWORD

These reminiscences, except the last chapter—the address at Lebanon—were originally written for and published weekly in The Citizen Appeal, of Nashville, Tenn., beginning in June, 1929. There was no thought, at first, of their indefinite continuance or prolongation, and none of their ever appearing in book form. They were begun at the request of a representative of the paper, then launching out on its modest career, merely to fill up space with light readable matter. Designed merely for the momentary amusement and entertainment of the readers, there was, quite naturally, no effort at strict accuracy of dates or details, nor any attempt at orderly arrangement—just plain statements of recollections of persons and events and impressions jotted down from memory only, at spare moments in active professional work, much as they would be related in familiar conversation.

At first it was intended to limit the reminiscences to members of the legal profession and to events occurring in and around Nashville and Middle Tennessee; but this idea, as the reader will perceive, was enlarged and broadened so as to extend to recollections of practically the whole life of the writer, and consequently to cover many obscure personages and trivial events of little or no interest except to those having some knowledge and recollection of them.

The articles, as they came out, were favorably received, and especially by those having some acquaintance with the writer, and many requests came in for their publication in more permanent and durable form. This book is now published in response to these requests.

The book might have been much improved by revision and rearrangement in more orderly form and the elimination of the more trivial parts, but the matter was not deemed by the writer of sufficient importance to justify this labor; and, under the circumstances, further apology need not be made for this publication in the same order, or lack of order rather, and in the same form as the articles originally appeared in the Appeal.

As will be seen, a vein of humor pervades many of the articles, and if some of the stories related may seem a little salacious, or profane, the reader is asked to bear in mind the gallant motto of the Order of the Garter, "Honi soit qui mal y pense,"—evil to him who evil thinks.

If this unpretentious little volume shall afford to its readers even momentary pleasurable recreation, the author will feel amply compensated.

Nashville, July, 1930.

Jno. A. Pitts.

PERSONAL AND PROFESSIONAL REMINISCENCES

I

Author's first visit to Nashville—Old City Hotel—Emerson Etheridge—Dr. McDonald's "Eternal Now."

SINCE the passing of Morton B. Howell, the father of our present excellent Chancellor, R. Boyte C. Howell, and a walking encyclopedia of the history of Nashville, such delightful reminiscences of the city, in its early days, as he was wont to give us, have become deplorably scarce. The present generation, engrossed with the absorbing occupations and amusements of the day, knows little of the interesting men and events of half a century or more ago, and still less of the physical aspects of the city of that period; but, notwithstanding the disposition of youth to enjoy the present and dwell upon anticipations of the future, rather than luxuriate in the pleasant memories of the past—as old people do—I am persuaded that these memories of the past are not without interest to them.

I am not yet an old man (am only 80 years young) and my knowledge of Nashville and its people fifty years ago was quite limited. Prior to my location in the city in 1888, now just forty-one years ago, my knowledge of the city was only such as could be gained by occasional visits, chiefly in at-

tendance upon the appellate courts, and my knowledge of its men—I had none of its women—was confined to members of the bench and bar.

My first visit to the city was in January, 1870, when on my way to the law school at Lebanon; and a word of reminiscence of that occasion may not be without interest to the readers. I spent only an afternoon and night in the city. The Legislature was in session, and my uncle, Judge Jonathan Morris, was a Senator from his district, comprising my native county of Wayne. He was boarding, with Emerson Etheridge, also a Senator, as his roommate, at the old City Hotel on the east side of the Public Square. I stopped at that hotel, and the hotel being crowded, I was assigned to a cot, at my request and by consent of my uncle and Mr. Etheridge, in their room. Having attended a theater and been up late, I did not awake next morning until after Judge Morris and Mr. Etheridge had risen and partially dressed. As I awoke I observed Mr. Etheridge standing at the wash-bowl removing his cuff buttons, rolling up his sleeves, and unbuttoning his collar-band and turning it in; and when he had finished bathing, and combed his hair, I observed him draw on a clean shirt over the one he was wearing. I was surprised, and asked him why he did that. Mr. Etheridge's reply was:

"Young man, it turned cold last night, and it has been my life custom when putting on fresh linen after such a change to take off nothing, and when the weather moderates, to remove gradually the redundant apparel; I may have on three or four shirts before the weather changes again. In this way I regulate my clothing according to the weather. I thus avoid taking cold. I attribute my robust

health largely to this habit, and I commend it to you."

Mr. Etheridge was indeed a very robust man, and his advice seemed good to me, and I have often followed it, I am sure with good results.

At that time there were no means of transportation between Nashville and Lebanon except the turnpike, not nearly as good then as now. There was a regular stage line, for mail and passengers, between the two points, distant about 30 miles, and I went from Nashville by this stage line in a lumbering vehicle suspended on huge leather straps and drawn by four horses. The time between Nashville and Lebanon was three and a half to four hours. The Lebanon Railroad, then called the Tennessee and Pacific, was then under construction, and it was so far completed by the fall of that year, when I returned to Lebanon, that I was enabled to go on it to within a mile or two of the town, and to return on it after completing my course in the following January.

A short time before this my first trip over the Lebanon Turnpike, in 1870, I had read an able article in the Cumberland Presbyterian Review, by Doctor McDonald, then president of Cumberland University, entitled "The Eternal Now," discussing the question of "the fore-knowledge of God" and distinguishing it from Predestination or Fore-ordination, by many deemed its equivalent. Doctor McDonald had used the Lebanon Road as an illustration of one of the points made in his discourse, and this lent added interest to my trip over the road.

This question had bothered me in my theological cogitations. I was not then a member of any church

or professor of any religion, but was not unaware of nor unaffected by the current discussions of the religious tenets and doctrines of the several church denominations, then much more in vogue than they are now. I could not conceive how it was possible, in the popular phrase of the day, for God to foreknow all things from before the foundation of the world without such foreknowledge operating as or being equivalent to foreordination. In other words, I could not conceive of the consistency of the foreknowledge of God with the free agency of man; if my destiny was foreknown by God from all eternity, I could not see how it was possible that I could change that destiny.

It was this fallacy of thought that Doctor McDonald had sought to combat. His fundamental postulate was that with God there was no succession of time—no past and no future, no yesterdays or tomorrows—but that to Him all time was present, an eternal now, the title of his article.

And one of his illustrations, as I recalled as I passed over the hilly road to Lebanon, was this very road and a traveler on it, as I was. Such a traveler, said he, with his limited vision, cannot see or know as he descends into a valley, what may be beyond the next hill; but, said he, in substance, if even that traveler were elevated but a few thousand feet above that road, he could easily perceive, even with his limited vision, all objects along its whole course. How easy then, he continued, it must be for an omniscient God to whom all times and movements and things are eternally present to see and know their courses and their end without ordaining either.

Of course his argument was couched in dignified and classical phrase to which I cannot aspire. I

only attempt its substance in plain and simple terms. It was quite convincing to me, and ended by trouble on the point.

These incidents of my first trip to Nashville may possibly be of interest to your readers; and if so, I may supply further and later reminiscences, but enough for the present.

II

Old lawyers of Nashville—Judge East—His story of fatal Corroborating Evidence.

AS YOUR own Mr. Webb reminded me recently, it was Franz Liszt, the companion and friend of the great Wagner, who, when asked what he thought was the greatest thing in the world, replied, unhesitatingly, "Memories."

I think all will agree that if memories be not the greatest thing in the world they are, at least, among the most fascinating, at all events when they are pleasurable.

To me, and I doubt not to most intelligent readers, well written "Memoirs" are the most charming and absorbing of all forms of literature; and of all nations the French have furnished the most gifted and entertaining writers of such memoirs—those of the courts of the Louis's and the French Revolution, especially, affording an exhaustless mine of fascinating interest.

Without committing ourselves to the Chinese fetish of "Ancestor Worship," we may well, and should, indulge a reverent veneration for the noble men and women of the past who have contributed, in their day, to the development and progress of the civilization we enjoy; and what is true of nations and of the world is also true, in a smaller way, of communities. No state, county, city, community, or

neighborhood is without pleasant memories of exemplar leaders of its past, either in the professions or in the common walks of life, which may always be worthily recalled. There is still to be found in the past of every community, in some form, a "Village Blacksmith," of whom one of our great poets so touchingly said:

"Toiling, rejoicing, sorrowing,
Onward through life he goes;
Each morning sees some task begun,
Each evening sees it close—
Something attempted, something done,
Has earned a night's repose."

The temptation is great to enlarge upon these heroes of the common people—of the "bold peasantry," the "rude forefathers of the hamlet," and the "cotter," of whom Goldsmith, Gray and Burns so eloquently sang; but this would be to drift away from our subject—the men and events of the past of our goodly city of Nashville.

Long before I came to Nashville to live I was familiar with its more prominent lawyers and jurists. Such names occur to me as Judge Edward H. East, Edwin H. Ewing, Godfrey M. Fogg, Judge Horace H. Harrison, Gen. Wm. B. Bate, Judge James O. Shackleford, Judge Jo. C. Guild, Judge Nathaniel Baxter, Gen. Wm. G. Brien, Judge Thomas H. Malone, Abram L. Demoss, John Lellyett, Sr., Judge James M. Quarles and many others who came in later.

Of course I can not take time for reminiscences of all of these. Perhaps the most generally beloved, especially by the younger men of the bar, was Judge

East, largely on account of his cordial sympathy with them, his social qualities, his democratic habits, and his apparently inexhaustible fund of humorous anecdotes which he was constantly dispensing to the delight of his hearers in all places—the court room, in his office, on the street—wherever he chanced to be. His presence in any company was veritable sunshine, his simplest story a classic of its kind. He was, withal, a great lawyer, as well as a splendid Christian man. He was a student of the Bible, and his lectures to his Sunday-school class were for years a never-failing fountain of Biblical truth, expressed in most charming phrases. His advocacy as a lawyer was almost invincible, his powers of persuasion well nigh irresistible. His resourcefulness and power to "turn the point" on his adversary was little less than marvelous and sometimes surprised even himself. An instance of his resourcefulness was related to me by him, which I may be pardoned for recounting here.

Judge East and his partner, Mr. Fogg, were for a long time trial lawyers of the Nashville & Chattanooga Railroad, as it was then called. He was trying a lawsuit brought against the railroad by a farmer for killing some of his livestock, in which the plaintiff and his son were the principal witnesses. The plaintiff in his testimony had made out a clear case against the railroad, and was corroborated on several points by his son; Judge East had no witnesses by whom to contradict them; their story, he thought, was a fabrication, besides being absurd; but he saw that unless he could discredit and break down their story, the jury would probably believe them and the case be lost.

So, when he came to the argument, he descanted

at length upon the incredibility and absurdity of the old man's story, corroborated though it was by the son, and wound up by telling the jury that the case was illustrated by an incident he recalled as having happened in one of the grassy valleys of Cheatham County, which he proceeded to relate; and the story of that incident, which, though perhaps a "chestnut" to some of your readers, is the point of this reminiscence, was substantially this:

There lived, said Judge East, in one of the grassy valleys of Cheatham County a man whom he would call Smith (for that was not his name), who was of good standing and a member of the neighborhood church, but who was addicted to the habit of gross though harmless exaggeration—telling stories that were absurd and incredible but did no harm to any one. Finally this habit of brother Smith, said Judge East, became so notorious that it began to produce a sort of scandal in the church, and the church session took note of it and appointed a committee to visit brother Smith and warn him that if he did not quit it, charges would be preferred against him for lying.

So the committee visited brother Smith one bright spring morning; brother Smith met them at the gate and cordially welcomed them, not knowing the object of their visit. As they walked up through the broad grassy front lawn the committee observed a flock of very fine sheep browsing on it, and remarked upon the fact, whereupon brother Smith said:

"Yes, that's a very fine flock, perhaps the finest in the state. The dam of that flock cost me five hundred dollars."

The committee expressed surprise, never having

heard of so costly a sheep, and manifested their desire to see that fine ewe.

"I'm sorry," said brother Smith, "that I can not show her to you. She's dead, and, by the way, she lost her life through a very remarkable accident. Do you see that tall peach-tree just inside of neighbor Jones' picket fence? Well, about three years ago Brother Jones was up in that peach-tree pickin' peaches when a limb broke and Brother Jones fell, and one o' them sharp pickets that stood out from the fence caught him in the middle and ripped open his abdomen and his entrails fell out and broke off and Brother Jones fell in a heap with 'em to the ground unconscious. The children raised an alarm and the boys plowin' over in the field beyond rushed in and picked the old man up and carried him into the house and put him to bed, and one of 'em jumped on his horse and ran down the road for the doctor. When the doctor came and examined him he found, of course, that his entrails were all gone, and the boys rushed out to that peach-tree to git 'em, when, lo and behold, an old sow was just a-lappin' the last one up. The doctor said the only chance to save Brother Jones' life was to catch a live sheep, take out its entrails and sew 'em up in him and maybe he might get well. And so the boys rushed out into the yard in hunt of a sheep, and it just happened that my fine ewe had got through a hole in the fence and was browsing in Brother Jones' back yard, and they grabbed her, cut her open and the doctor inserted her entrails in Brother Jones, and, strange to say, brethren, he got well and is alive and in good health today."

"Well, Brother Smith," said the committee, "it is just such things as that that we have come here

today to talk to you about. We know you mean no harm by telling such stories as that; but your habit of doing so has become a scandal in the church, and we have been appointed as a committee to remonstrate with you and admonish you that if you do not quit it the church will be compelled to prefer charges against you."

"Then you doubt what I say," said Brother Smith. "Why, I can prove every word of it by my son John; O, John, come down here."

John was splitting stove wood up at the kitchen, a tall, gaunt, gawky boy of nineteen years. As he approached, his father repeated to him what he had said to the committee, and added:

"Now, John, these men doubt the truth of what I say, and I told them I could prove every word of it by you. Now ain't it so?"

John replied:

"Well, pap, you remember I was down on the creek a-fishin' that day, and warn't here; so I can't say, of my own knowledge, that all you say is so; but this much I do know—that Mr. Jones slept in the barn all that winter with the sheep and drapped a couple o' lambs the next spring."

Judge East said his story took with the jury, and to his great surprise they gave him the verdict.

III

Gen. W. G. Brien—Address in Supreme Court—Sam Watson and the Nine Owls.

OF THE prominent post-war judges and lawyers mentioned in my last previous article, probably General W. G. Brien was, locally, the most notable, though by no means the best lawyer. In fact, if I may so speak of the dead, he was not a profound lawyer, nor indeed a very successful practitioner, owing largely to his contempt of details. I well remember my first observation of him, and the circumstance illustrates the truth of what I have just stated.

In the seventies or early eighties, I was attending the Supreme Court at Nashville one day when a criminal case, appealed from Davidson County, was called and argued. General Brien represented the appellant, and made one of the most eloquent and forceful arguments in behalf of his "innocent and much persecuted client" that I had ever heard. For about an hour I sat entranced. How it was possible that any jury of common sense and honesty could have convicted so good a citizen on such flimsy facts I could not conceive. It seemed to me that a reversal must come immediately from the bench (which was customary at that time in very plain cases).

But as General Brien concluded and sat down,

the Attorney General (I think General Pickle) arose and said to the court, in substance: "May it please your Honors: I have been very much entertained, as I am sure your Honors have, by the very eloquent appeal of the distinguished gentleman representing the plaintiff in error; but I am reluctantly compelled to state, perhaps to the surprise of the court, that there is no bill of exceptions, and hence none of the facts stated by the eloquent gentleman are contained in the record."

This statement was duly verified by reference to the record, and the conviction affirmed from the bench.

General Brien, as I have said, had a contempt for details, at least was impatient of the drudgery incident to them, and usually entrusted them to his associates who were very often young men. Besides, like most very eloquent men, he had an inflated notion of the power and efficacy of eloquence—believed it would carry all before it and accomplish anything,—a very sad mistake.

In my opinion, General Brien was, naturally, the most eloquent of the members of the Nashville bar during the whole period I have known it. His command of pure and elegant English was marvelous, and it flowed from his lips as freely as water from a spout spring.

He had also a fine sense of humor, and, like Judge East, was a great story teller. Some of his stories may have been of his invention, but they were nevertheless interesting and funny.

I recall one he told on Sam Watson, a fine fellow lawyer of the Nashville bar, but sometimes, in ante-prohibition days, subject to the fault of over indulgence. The General, Mr. M. T. Bryan and Sam

visited Cincinnati on the occasion of some convention, and, as was not unusual, Sam got on a "spree." When he began to sober up and got able to walk about, the General and Mr. Bryan thought it might benefit him to take him out to the Zoological Park on Walnut Hills and thus give him some fresh air. The General said:

We were in the Aviary, the bird corridor, filled with large cages of all sorts of fowls and birds, most of the cages having a tree trunk in the center with limbs extending out for the birds to perch on. There was one cage of owls, and Mr. Bryan and I noticed as we passed this cage that there were nine of them, and they were all perched in a row on one limb, walling their big eyes at us as we went by. We were some fifty steps ahead of Sam, who was moseying along behind us alone. When Sam approached this owl cage we noticed that he hesitated, gazed vacantly at the cage over his shoulder, then turned and walked back a few steps, gazing over the other shoulder. This he did several times, as if puzzled about something. Finally he beckoned to us to come back, which we did; and Sam said:

" 'General, do you see that owl sittin' up there on that limb?'

"I said, 'Yes, what of it, Sam?'

" 'Well,' said Sam, 'damn my soul if it don't look to me like there's nine owls on that limb.' "

The General would laugh, and say Sam was soberer than he thought—he really saw nine owls, but, remembering his spree, thought they had been multiplied from one.

General Brien was not a total abstainer himself, but I never knew his cup to thicken his tongue or prevent the normal flow of eloquent English from

his lips. His imagination was vivid and venturesome, and the occasion was rare that he did not, in the argument of any sort of a case, indulge in some lofty flight of oratory based on either the actual or imaginary facts, and, generally, in an apparently unconscious disregard of consequences or the logic of the situation. As Judge East once said of him, he would "soar like an eagle over the sea, all unconscious of the depths beneath."

Fortunately, or unfortunately, I leave for others to say, this habit of ornate and flowery oratory, in the legal as well as political forum, has well nigh passed out of vogue. It occurs nowadays very, very seldom; and when it does, it provokes a smile of ridicule rather than applause. The times have become too practical and businesslike, and lawyers and politicians now argue their cases very much as if they were trying to convince another across a table—with cold facts and reason. Sentiment has been largely tabooed, though sentiment in the past has been, in my opinion, the most persistent force in the world. But I will not wander into that field.

IV

The Lawyer's Place—Some Nashville Lawyers—Reflections—Children, the Savior's tribute to them.

THE subject of reminiscences, to one of my age retaining a lively recollection of most of the events of a long and active life, is almost an inexhaustible one; and in making even a haphazard record of them the chief difficulty is that of selection. Those most interesting to the writer may be of little or no interest to the reader.

There is still another difficulty: Some incidents will appeal to lawyers, others to laymen. Which should be preferred? Or shall a modicum of both classes be noted? I have resolved upon the latter course, rather than the former, and therefore give warning that if I shall continue these disconnected and rambling effusions, some of them may relate to incidents not specially of interest to lawyers, and others, perhaps, to incidents of no interest to any one but myself—purely personal, so to speak.

But for the present, the lawyer is the chief theme. In fact, to my view at least, the lawyer is, when all is said, our most useful and highest class citizen. Let no one hastily exclaim at this statement. It is not made idly, or lightly, or boastfully, but in perfect sincerity, from a lifetime of observation and consideration of history. But for the lawyers, the guaranties of individual life, liberty and property

—which are the essential roots of all the other blessings we enjoy—could not exist or be maintained. I do not refer to the "shyster," who merely poses as a lawyer for the money he can gain, but to the real lawyer—the man who conscientiously devotes his life to the study and vindication of human rights—to the framing of constitutions and laws to define and secure them, and of courts and instrumentalities to declare and enforce them. These tasks have ever been, in free countries, those of the real lawyers.

And if, in times of settled peace and order, when no civil or military revolutions are brewing or aflame and the people are normally pursuing the even tenor of their way, this high function of the lawyer is not so obvious, let it not be forgotten that this happy state is the result of his handiwork, and that he constantly stands guard over that state, to see that it is upheld and preserved. All honor to the lawyers, now and ever more!

Now, coming back from this digression to the lawyers of the Nashville bar, with which I have been associated for more than forty years, my first thought is one of pain from the loss of so many of them during that period.

I have recently made up from memory a list of the lawyers and judges resident at Nashville who have passed away since I came here in 1888, and the number totals 125—and no doubt some names have escaped my memory. A list of them would be interesting, but too long to insert here. Among them are 4 Supreme Court Judges, 8 Chancellors, 8 Circuit Judges, and 2 United States Supreme Court Judges, with several Criminal and County Court Judges and City and County attorneys; and

less than half a dozen members of the bar living when I came here now survive.

Many of those who have thus passed away were among my real and close personal friends. Judges Freeman, Jackson, McAlister, Bonner, Childress, Cartwright, Waller, Tillman, Meeks, Hart, East, John Allison, Cook, Lellyett, and Wilson; Generals Caldwell, Hart, Thompson, Priest, Brown, Ruhm, Vaughn; lawyers Ed and Jere Baxter, C. D. Berry, Frank P. Bond, Wm. G. Brien, E. W. Carmack, S. A. Champion, A. S. Colyar, John Frizzell, John Wesley Gaines, Morton B. Howell, Hamilton Parks, Baxter Smith, Firman Smith, G. P. Thurston, Wm. B. Turley, W. H. Williamson, W. D. Witherspoon, A. F. Whitman, W. M. Wright—these I mention specially as intimate and much esteemed personal friends, and there were many others.

And although new friends have come with new additions to the bar, they cannot fully supply the places of the old ones; and as I stand upon what I may justly term this oasis of life in the midst of this desert of death—

"When I remember all
The friends so linked together,
I've seen around me fall
Like leaves in wintry weather,
I feel like one who treads alone
Some banquet hall deserted,
Whose lights are fled, whose garlands dead,
And all but he departed."

The sadness of such a situation would be intolerable were it not for the new friends who have come with the flight of time, and the few old ones

who remain. These new friends, I am beginning to perceive, do wonderfully brighten the path of the aged.

I count it inexpressibly fortunate for myself that, the older I get the more I enjoy the society of young men—of young people generally, and of little children. Such associations seem, in a sense, to renew my youth—to take me back to my own early life, when the buoyancy and hope that now inspire them were my own, and which I have not forgotten. The prayer, "make me a child again just for tonight" may be answered by one's self if one will. With reasonable health, there is no excuse for growing old. The mind and heart of the aged, if not corrupted by sordid things, should be just as responsive to the beauties of the world and life as those of the young—in fact, should be even more appreciative of the charms of both nature and art.

But of course it is difficult, if not impossible, for the aged to have that innocency, purity, and undoubting trustfulness that belong to the unspoiled child—to my mind the most lovable of all the objects of creation.

Others may disagree, but to me the most touching and beautiful of all the touching and beautiful scenes described in Holy Writ is that portrayed by St. Matthew where he tells us—

> "At the same time came the disciples unto Jesus, saying, Who is greatest in the kingdom of Heaven? And Jesus called a little child unto Him and sat him in the midst of them, and said, Verily I say unto you, Except ye be converted, and become as little children, ye shall not enter the kingdom of Heaven. Whosoever therefore

shall humble himself as this little child, the same is greatest in the kingdom of Heaven. And whoso shall receive one such little child in my name receiveth me. But whoso shall offend one of these little ones which believe on me, it were better for him that a mill-stone were hanged about his neck and he were drowned in the depths of the sea."

As we read the closing sentence of this description, we can almost see the Divine countenance change from the beneficent smile that expresses the beatitudes to one of intolerant indignation towards those who would offend the innocent and trustful little child. Let those who would mistreat the children, whether parents or not, take warning and beware.

I trust the reader will pardon the somber tenor of this reminiscence with its moralizing, and wait patiently for the relief of lighter and more amusing, if not more instructive, thoughts.

V

Judge J. C. Guild—Judge Thos. P. Bateman—Jake Leech—Breach of Promise Case at Waverly.

AMONG the best known celebrities of the post-bellum Nashville bar was Judge J. C. Guild, who, by the way, died before I came here, though I knew him very well. He was of the old school class of lawyers, best adapted to country rather than city life and ways. His quaint and rugged humor was his chief characteristic. He could not, as Judge, refrain from taking sides with the "underdog" in the case before him, especially if that "underdog" was a poor person. Sympathy for the poor and weak dominated him, and often led him into unseemly and sometimes ludicrous manifestations of partiality on the bench. He sought to attain what he thought was the right result, without regard to methods of procedure.

It is said of him that on one occasion when an insurance case was being tried before him, and wherein the insurance company was defending on the ground that a certain condition of the policy had been violated by the plaintiff, he called for the policy and closely examined it, and while the plaintiff was on the witness stand, the Judge leaned over and, pointing his finger at the condition in question which was in very small print, significantly said: "You didn't read that fine print, did you?"

Of course the counsel for the defendant protested, but it did no good—the mischief had been done, and the Judge, knowing this, made suitable apology so as to clear the record.

Such incidents were not uncommon. He would, it is said, if he made a glaring error in his charge to the jury, and a verdict was returned in accordance with what he thought was right, correct it when he wrote out his charge for the record on appeal, and nothing could move him to give the losing party the benefit of that error. In short, as I have said, his object was to reach justice without regard to methods.

I have known few Judges whose passion for "justice" regardless of methods was so strong as that of Judge Guild, though I have known many whose passion for justice was equally strong but was tempered with a decent respect for methods of procedure. One such Judge I may mention in this connection, Judge Thomas P. Bateman of Savannah, for many years Circuit Judge of the eleventh judicial circuit, of whom I could write many pages of interesting reminiscences.

Judge Bateman was another lawyer of the old school, quite as quaint and eccentric as Judge Guild. Disappointed in love, in his early life, he never married, though he lived to be more than eighty. He was an infidel (having been named for Thomas Paine), and a cynic to the last degree, although a man of warm attachments and socially inclined, of sturdy and unimpeachable honesty and firmness, and with as high a sense of fairness and justice as any man I have ever known. He was so straight as to appear sometimes, to use a common phrase, to lean backward. He, like Judge Guild, could not

refrain from taking sides in hotly contested cases, though, unlike Judge Guild, he would give the losing party the full benefit of his rulings, so plainly and frankly stated that they could not be misunderstood.

I once had a conversation with him which afforded a fair illustration of his point of view of his duties as Judge. I had just tried a case before him, at Waynesboro, in which I had defended a negro boy charged with a grave crime and against whom there was much feeling in the community, verging upon a lynching bee. The negro had been convicted by the jury, upon evidence which I thought not only failed to show his guilt but demonstrated his innocence. The Judge agreed with me, and promptly sustained my motion for a new trial on the facts. This case gave rise to the conversation to which I refer.

The Judge said—and I quote his words without expurgation:

"I have made it a rule to watch closely the evidence and the conduct of the parties and witnesses in criminal cases tried before me, and if I become convinced that the defendant is guilty and no undue advantage is being taken of him, if he is not convicted and punished, by God, it shall not be my fault; and on the other hand, if I become convinced that he is innocent or the victim of a frame-up, I'll be damned if he shall be punished while I am Judge."

Surely this was not a bad program for an honest and intelligent Judge. I may in future relate other reminiscences of this great Judge and of cases tried before him—as well as of incidents that occurred in our long association.

Another somewhat similar character is called to mind by the mention of the name of Judge Guild, the Honorable Jake Leech, who lived for a long time at Charlotte, though a frequent visitor at Nashville.

Mr. Leech had been a Baptist preacher, but had been corrupted, presumably, by his career, during the Civil War, as a Confederate soldier, and so, turned lawyer—at least turned to the practice of the law, for he was never much of a lawyer, though a fine jury advocate. He was the quaintest of the quaint, and took pride in his quaintness and eccentricity, often feigning unsophisticated ignorance where no one was wiser. He was a man of great common sense, a good judge of human nature, and an actor par excellence. There are many amusing stories of his performances, for only one of which I have room here. It was told me by Mr. Bowman, his preacher-lawyer partner at the time, and I can therefore vouch for its authenticity.

Messrs. Leech and Bowman had brought suit at Waverly for a young woman against a rich farmer's son for breach of promise of marriage and seduction, and Lanier and McAdoo, the two most prominent lawyers at the Waverly bar, were defending. When the case was tried, before Judge Rice, I think it was, and a jury, Mr. Bowman opened the argument with a lot of platitudes, leaving Mr. Leech to close the argument for the plaintiff. Lanier and McAdoo followed for the defendant. They conceded that the plaintiff had made out her case and was entitled to some damages, and the burden of their plea was that the jury should not be led astray by their sympathy for the young woman and her child, but should do simple justice,

which would be to award her compensation for her injury not exceeding say a thousand dollars—in short, their effort was to beat down the verdict of the jury. Finally, it came to Mr. Leech's turn to close the argument.

He began, Mr. Bowman said, with picturing in his inimitable way, for he was a real orator, the quiet and peaceful scene of the home of the plaintiff's father and mother, of whom the plaintiff was the only child—the humble little cabin in the narrow branch valley, with its blue smoke curling up among the trees as the old man returned at evening from his day of honest toil, the frugal meal to which they sat down, the glowing fireside at which they gathered, with their bright little curly-headed girl, the plaintiff, playing around their knees, her innocent childish prattle, the pride of the old people in this child, their treasure, the buoyant hope and expectation they indulged that when she grew up to beautiful womanhood she would marry some honest and respectable farmer and settle down near them and raise up another set of sweet little ones to bless them in their old age, etc., etc.

In this way he so wrought upon the sympathies of the jury that they all made liberal use of their handkerchiefs.

Then he turned upon the defendant who, he said, had come like a thief in the night, with the tempting and deceitful allurements of the serpent, to rob this innocent child of all that was dear to her in life and to bring these old people in sorrow to their graves—and in this way he worked both himself and the jury into a frenzy of indignation against the defendant for his wrong.

Then, pointing and shaking his long and menacing finger at the defendant, he said:

"And you, sir, say you want justice. Yore lawyers plead for you for justice! Why, gentlemen of the jury, you can't do justice in this case to this poor plaintiff and her little baby. You know you can't. You can give 'em your verdict for ten thousand dollars—that's all they have sued for, and that's all you can do for 'em; but, gentlemen, that won't be justice."

Then turning again to the defendant passionately, the tears trickling down his face—

"You talk about justice! Sir, you'll never git justice till you're called before the bar of yore Creator and hear pronounced upon you that awful sentence, Depart from me, you G—d d—n s— of a b—ch!"

The crowd broke loose in wild applause. The Judge rapped vigorously for order, and when it was restored, said to the clerk:

"Mr. Clerk, fine Mr. Leech fifty dollars for contempt of court."

Mr. Leech, wiping the real tears from his face, with astonished innocence shown in every lineament of his countenance, looked up at the Judge and asked:

"Why, may it please your Honor, what have I done?"

If Mr. Leech was not unconscious of the language he had used (which perhaps will never be known), he was certainly a most consummate actor. At all events, the fine was set aside, and the jury returned a verdict for the $10,000—and to this outcome who will raise the voice of protest?

VI

Early Recollections—Past and Present Conditions at Nashville.

SO FAR I have given reminiscences of men only —that is, of members of the bar. It is time for a diversion to things—to some of the changes in the physical aspects of the city and the occupations, conveniences, instrumentalities, habits and amusements of the people which have taken place in the past forty-one years. To the younger of your readers, especially, should such a review be interesting.

When I approach this subject I am staggered and bewildered by the mass of details, and sometimes puzzled to locate, in point of time, some of the numerous changes. As already intimated, I recall the principal events which have occurred in this country since 1852; and, as I have often reflected, there have been, during that period, more and greater advances in physical science, in discoveries and inventions in the utilities and conveniences of life than in all previous recorded history. What a blessing to have lived in such an age!

Truth is, indeed, stranger than fiction. As the great Bard of Nature truly said, "There are more things in heaven and earth, Horatio, than are dreamt of in your philosophy." There are hundreds of commonplaces of every day life now which, in

my early boyhood, were beyond the range of the most brilliant imagination of man. I was born and reared in the country, remote from railroads, telegraph lines, daily mails and newspapers—out in the wastes that lie "close to Nature's heart," and where life was almost primitive and entirely rural. I was almost 20 before I saw a railroad or a town or city of above 500 people. I recall the time when there was not a plow in our county that had not been made in a neighboring blacksmith shop, not a wagon that had not been fabricated in the county; when there were no cooking stoves, sewing machines, mowers, reapers, or even steam mills or wheat threshers or cotton gins; and when all the clothing and food were made at home, except a few yards of calico and jeans for "Sunday clothes" and a little sugar, coffee, pepper, and salt to save the meat—when all the children big enough to plow worked in the field, and the schools were limited to about three months between "laying by" and "gathering" time. What a life that seems to us now!

The situation at Nashville when I came here in 1888 was not so bad, of course; but I dare say the modes of life prevailing at Nashville in 1888 were not more advanced over those of my rural boyhood home, just briefly described, than are those of today over those of 1888. What a marvelous progress! How many of us pause to reflect seriously on these things, and to give thanks to Divine Providence and to the free institutions of our great country and the resulting intelligence and wisdom of our teachers and scientists for these great blessings?

I am not writing history, nor dealing with recorded statistics, but, relying wholly upon memory,

relating what I know and remember. I may be mistaken in some dates and details, as I am not referring to any book or record; but I vouch for the truth, in substance, of what I am saying.

When I came here in 1888 there were no electric street cars. All the street cars were drawn by horses or mules, except on one line—the Glendale line, then operated by a dirty little dummy steam engine. No streets were paved otherwise than with ordinary macadam or rough cobblestones, and many of them were full of ruts and holes, and the sidewalks were mostly of brick. Nearly all the turnpikes of the county were "toll" pikes, surfaced with macadam, and on which a toll was exacted every five miles or less. There was only one vehicle bridge across the Cumberland. We had practically but one railroad—Nashville was commonly referred to as a "one-railroad town." The space now occupied by our terminals and fine Union Depot was a rugged ravine, dotted with cabins and cheap structures—a sort of second "black-bottom" with the railroad running through it. Broad Street was penetrated by a railroad tunnel through which the trains passed; and our only excuse of a "depot" was a dingy, ramshackled structure at the foot of the hill on Church Street. The penitentiary was on Church Street, a few blocks west of the present terminals, then considered in the western suburbs of the city. There were no interurban railroads; no automobiles, auto trucks, or motorcycles, and of course no garages or filling stations; no electric cooking devices, or refrigerators or oil heaters; the telephone was in its infancy, and but few families had one; the talking machine had not been invented, nor the radio, nor the picture show, nor the

airplane—nor the myriads of other conveniences resulting from the development of electricity as an illuminating, heating, refrigerating and motive power, then produced only by steam; the enormous potentialities of the water power of the state in the production of electric energy—the greatest domestic and industrial agency the state possesses—had not been touched.

We had no public or municipal parks—not one; no football or baseball parks, or organizations or teams; no Y. M. C. A., Y. W. C. A., or Y. M. H. A., or other civic organizations worth mentioning, outside the churches and schools and the municipality.

Our great Vanderbilt University, retarded by a factional church control, was struggling slowly up through its troubles to its adolescence; Peabody was languishing in its South Nashville isolation; Ward's School for Girls was sweating and smothering in its cramped quarters on North Spruce Street, now Eighth Avenue; we had no conservatory of music, no symphony orchestra, no Community Chest.

We had no "sky-scrapers"—the tallest building in the city, except the State Capitol, was the Maxwell House, a relic of ante-bellum days, then the principal hotel of the city; the old "Nicholson House" crouched where the Tulane now towers, and the old "Bailey House" where Lebeck's now rears its lofty head, while lowly private residences then stood where the "Hermitage," the "Andrew Jackson," the "Sam Davis," the "Bennie-Dillon" and "Doctors' Building," the "Cotton States," and the three other magnificent structures of our leading insurance companies now tower; and unpretentious small stores or brokers' or bankers' buildings then

stood where the "Independent Life," "Stahlman," "Nichol," "American Trust" and "Nashville Trust" sky-scrapers now pierce the sky.

These are some, but not all, of the changes indicating the progress of our city during the past forty-one years—I have not dwelt upon present conditions; they are open to the eyes of all, and must be compared by the reader with the past conditions I have emphasized.

And what does it all mean? Are our people better or worse than they were under more primitive and less advantageous conditions? Are they broadening or narrowing in their conceptions of life and in their moral and social conduct and relations? This is the paramount question.

I for one wish to give my voice to the belief that our people, the people of our country, the people of the world, are growing broader and better every day and every hour, that the seed of good morals and brotherly love sown by William J. Bryan and Woodrow Wilson have taken root and are destined to encompass mankind.

VII

Panics of 1873 and 1893—Spurr Case—Panic of 1907.

HOW many of your readers remember the panic of 1873, or that of 1893, for that matter? The first was brought about, it was then understood, by the contraction of the currency resulting from various causes arising out of the Civil War, but immediately and mainly from the then recent national legislation towards the resumption of specie payments. Much injustice had been done, it was claimed, to the non-capitalistic classes by federal legislation since the close of the war of 1861–5, favoring wealth and invested capital; and this is very true, but I shall not go into details, as that would be to thresh over old political straw.

The country had been on a paper money basis since the war, during which the Federal Government had for the first time issued its treasury notes, as money, called "green-backs," and authorized a system of National Banks with power to issue bank notes as currency based on government bonds, which bonds were payable in the "lawful money of the United States." The bonds originally bore a high rate of interest. The banks were allowed to purchase them (often at a considerable discount); then deposit them with the Comptroller of the Treasury, and issue ninety per cent of their face value in National Bank notes, to circulate as

money, and continue to collect the interest on the bonds. The "lawful money of the United States" at the time this system was created was "coin," that is, gold and silver—which were the only legal tender; but by this system treasury notes or "green-backs" were made legal tender for all debts between private citizens and corporations, and therefore to that extent "lawful money"—though not legal tender for import duties and certain claims due to the government. Then, later, silver was demonetized, that is, its legal tender function was taken from it, leaving gold, and "green-backs" for most purposes, as the only legal tender; then, still later, the "green-backs" were cancelled and destroyed by the government as they came into the treasury—"redeemed" it was said—until the volume outstanding was reduced to about three hundred and forty millions, when the Congress stopped the reduction at that stage.

Then, finally, in 1872, I think it was (I am speaking from memory only, and may be mistaken as to the order of some of these events), Congress passed the "Specie Resumption Act," providing for full "specie resumption" on the first day of January, 1879. This really meant that everything should go on the "gold standard" at the date named. Prices rapidly declined, industries languished, merchants, manufacturers, farmers and business men generally fell like leaves in an autumn forest, and within about a year from the passage of the resumption act came the "panic of 1873"—the most violent and disastrous of the three that have occurred in my lifetime—1873, 1893 and 1907.

In 1873 I lived at Savannah, and practiced my profession in the Eleventh Judicial Circuit and

Ninth Chancery Division, comprising, in the Circuit, the counties of Wayne, Hardin, Hickman, Lewis, Perry, Decatur, Henderson and McNairy, and the Chancery Division the same counties and also Lawrence and Benton Counties. At that time there was not a bank, state or national, in any of these counties, not a single one; and consequently I had no observation of the distress incident to panics in banking communities. But the distress among merchants and trading men generally (we had no industries other than saw and grist mills and cotton gins) was enormous. Assignments and insolvent estates were the order of the day.

The recovery was slow, for the process of contraction of the currency and general liquidation went on, in anticipation of "specie resumption day," but before that day came, the country had so far recovered and resumed its condition, as the late President Harding would say, of "normalcy," that resumption day was just like any other day, and passed unnoticed.

But what of the panic of 1893? I was living at Nashville then. Meantime, since the panic of 1873, just twenty years previous, the government, while not openly professing the "gold standard," was nevertheless maintaining it, in a way. It had abolished the free coinage of silver, and entered upon a system of purchasing silver bullion at its much depressed market value, as compared with gold, and coining it, or issuing certificates based on it, on government account, that is, at the rate of "16 to 1," the normal ratio when there was free coinage and practical parity between the silver and gold dollar at that ratio, thus making for the government what was called the "seniorage," that is, the dif-

ference between the cost of the bullion and the dollars it could be coined into at the "16 to 1" ratio; and at the same time, the government professed its readiness to maintain the gold standard by redeeming its outstanding treasury notes, and paying its obligations generally, when demanded, in gold; and in order to do this, the treasury established what was called its "gold reserve" of one hundred millions of dollars in gold coin. When the gold in the treasury fell below this minimum, it was the policy of the government to replenish it by the issuance of bonds and their sale for gold.

There was much agitation in this and other countries of the conflicting views of the "single" and "double" standards—free coinage of both gold and silver, or of gold only—the great fight for the "double" standard headed by W. J. Bryan in 1896, was brewing. The agitation tended to uncertainty and unrest in many countries, and naturally to a contraction of the circulating medium and credits. The failure of the Baring Brothers, large bankers of England, in 1890 or 1891, as I recall it was, accelerated this tendency. The gold reserve in the treasury had sunk far below the minimum, and the Harrison administration had printed bonds for its replenishment but refrained from selling them, it was said, for fear of the effect on the campaign between Harrison and Cleveland in 1892.

Cleveland was elected, as an avowed "sound money" man, another name for the gold standard, in the fall of 1892, and the real situation of the treasury was revealed; hence, soon after his inauguration on March 4, 1893, came the great panic of that year.

A majority of the banks in Nashville failed and were wound up, and even those that weathered the

storm were forced to close temporarily. Also many brokers and business firms went to the wall. Pandemonium reigned for many weeks.

On Saturday, April 25, 1893, as I recall the date, the stock of the Commercial National Bank was sold and purchased in the forenoon at 125 dollars per share; it had a capital of $500,000, and carried on its books a surplus of $200,000. In the afternoon it closed its doors and went into the hands of a bank examiner. It was liquidated through a receivership by Mr. Blackmore of Gallatin; and after an assessment of the stockholders to the limit—100 cents on the dollar—and the collection of all that could be collected from them and from all the assets of the bank, the creditors received less than 85 cents on the dollar of their claims.

Major M. A. Spurr was president of the bank, and Mr. Frank Porterfield was cashier. Both were held in the highest esteem, and the bank was one of the most popular and well patronized in the city, and was regarded as one of the strongest.

While the depression of the times was partially the cause of this failure, it was not the immediate, nor perhaps the principal cause.

The firm of Dobbins and Dazy, cotton commission merchants and traders, had offices in Nashville and New Orleans. Dazy and Porterfield, the cashier of the Commercial National Bank where the Nashville account was carried, entered into a secret partnership in the summer of 1892 to speculate in cotton. They bought cotton futures in New York on a large scale, thinking the market was going up; it went down, and the losses in this speculation, which were saddled on the bank, were the immediate cause of its failure.

The president and cashier, and some of the minor officials, with Dazy, were indicted in the Federal Court, and all convicted and either fined or imprisoned, except the president, Major Spurr. I defended Major Spurr, charged with the false certification of checks of Dobbins and Dazy. There was no dispute that he had certified the checks when the account of the firm was overdrawn; but the question was whether or not Major Spurr knew that fact, and therefore certified the checks "wilfully." The case was tried four times in the U. S. Circuit Court, each trial consuming from two to four weeks—twice before Judge Sage, once before Judge Taft, and once before Judge Severens—all but the last resulting in "hung" juries. Judge Severens, by an egregious error in his instructions to the jury, obtained a verdict of guilty, with a recommendation of mercy, and Major Spurr was sentenced to imprisonment for two years. I carried the case to the Court of Appeals, where it was affirmed. The Supreme Court of the United States granted certiorari and reversed the case in such a way as to indicate that the defendant could not be lawfully convicted on the facts; and the case was thereupon dismissed and Major Spurr went free.

Mr. John Ruhm of Nashville was District Attorney when the indictments were returned and at the first two trials before Judge Sage, and Capt. Tully Brown was District Attorney at the trials before Judges Taft and Severens; Mr. Ed Baxter was special counsel for the government, and led in all the trials—and just here I want to say, he was one of the ablest, and at the same time fairest, advocates I have ever met, urging his side with almost invincible force, but scorning all pretense or undue ad-

vantage. I think he was, in his prime, all in all, the best advocate of the South, if not the entire country.

The panic of 1907, which most of your readers will remember, was a mere breeze, compared with the storms of 1873 and 1893. It was purely a bankers' panic, arrested in an hour by the intervention of J. Pierpont Morgan, under an agreement with Roosevelt to consent to the absorption of the Tennessee Coal, Iron and Railroad Company by the Morgan interests, the U. S. Steel Corporation.

Thanks to Woodrow Wilson, Carter Glass and the Democratic Party, such panics are not possible under the great Reserve Bank system which they gave us.

VIII

The Goose Case.

SOME reminiscences of peculiar cases which have come under my observation may be amusing, if not instructive, to your readers. One of the first that I recall, which may be termed a "cause celebre," locally at least, arose in Hardin County in the seventies or early eighties, and was called the "goose case."

Two neighbors living on Indian Creek, one just above the other, named Steve Davidson and Henry Rose, each had, as he claimed, a flock of geese, that is, 12 geese and 2 ganders.

Davidson, who lived below, riding down the creek one day, observed his flock of geese waddling about and picking periwinkles in the shoal, opposite Rose's place, and, having no doubt they were his geese, drove them down the creek to his home and put them in an inclosure, from which he released them in a few days, and they remained about his place, picking periwinkles in his shoal.

Rose observed them and, recognizing them as his geese, drove them back up the creek to his home.

Davidson, missing his geese and finding them up at Rose's where the latter had penned them up, demanded possession of them, and being refused, brought his action of replevin for them before a Justice of the Peace, whereupon an officer took them

from Rose and delivered them to Davidson, to be held as usual in such cases, until the "rights of property" could be tried and decided on the evidence.

On its face, the case was not out of the ordinary, a mere action of replevin for a flock of geese. The comics began at the trial.

At the trial, the parties appeared with their witnesses, consisting entirely of their families—the wives and sons and daughters of the plaintiff and of the defendant, equal, as it happened, in number and intelligence, as well as sex.

Davidson, the plaintiff, and his witnesses all testified positively and with unshakable firmness that he owned a flock of 12 geese and 2 ganders, which the family had raised from "goslings"; that they had "picked" them on a certain day in the spring, only a few days before the suit was commenced; and had distinctly marked each one of them with a daub of green paint on the right side of the head, which marks were still there, to be seen by any one; that the geese were missing for a few days, and until Davidson found them up at Rose's and drove them home; and that the flock of geese replevied were Davidson's geese beyond any doubt or question—thus making out a clear case for the plaintiff.

Rose, the defendant, and his witnesses all testified to precisely the same state of facts, on defendant's side, with equal positiveness and firmness—that Rose owned a flock of 12 geese and 2 ganders which the family had raised from goslings; that they had picked them on a certain day in the spring, and marked them with a daub of green paint on the right side of the head, which marks were still there; that they were missing for a few days until

Rose found them down at Davidson's and drove them home; and that the geese replevied were Rose's geese beyond doubt or question—thus making out a clear case for the defendant.

The Justice of the Peace was "stumped"—his mind in a haze of doubt. Both families were equally respectable and presumably honest and truthful. If there were really two flocks of geese, no one seemed to know what had become of the other one. The Justice "took time to consider the case," and appointed a future day to render his decision.

When that day came, the Justice announced that he was still "hung up" in his mind, and suggested that the case be tried over again, and that the parties employ lawyers who could argue the case. This was done—a couple of young lawyers appearing and questioning the witnesses and arguing the case; but the result of the testimony was the same —it could not be shaken on either side.

The Justice had called in an associate Justice to sit with him on this second trial, at the conclusion of which, after consultation, they announced that they had not agreed, but thought they might agree; and set a future day to render their decision. On that day the Justice announced that his associate had quit him, and he himself had not made up his mind but was still considering the case, and he set another day to render his decision.

That day came, with the same result—the Justice was doing his best but just could not come to a decision. This happened several times—the Justice again frequently suggesting a retrial and reargument of the case.

In this way the matter drifted for about a year, when Rose, the defendant, who had been deprived

of his geese at the beginning of the suit, went to town and employed a lawyer, Mr. H. H. Hardin, who sought and obtained an alternative writ of mandamus to compel the Justice to decide the case, one way or the other. This writ commanded the Justice to decide the case or show cause why he should not do so.

It was at this stage of the case that I came into it. I was employed by the Justice to answer and defend the petition for the mandamus. It occurred to me to have some fun with the case. No mention had so far been made of the familiar rule of law that where the evidence is equally balanced the judgment should go against the party on whom rests the burden of proof—in this case the plaintiff; and of course, I made no reference to that rule or principle in the answer, but enlarged upon the "difficulties" of the case, the honesty of the Justice, his lack of any personal interest in the controversy, his anxiety and earnest efforts to decide the case, his repeated offers to hear further argument, etc., etc.—a very plausible, but obviously fallacious answer. The answer was duly sworn to by the Justice for as a matter of fact it was entirely true.

Upon reading the petition and answer at the trial before Judge Bateman, and submission of the case without argument, the Judge announced to plaintiff's counsel: "Well, Mr. Hardin, I don't see where the defendant has been at any fault, and your petition is dismissed."

Of course I was surprised, but the fun was not ended. Rose appealed the case to the Supreme Court; and in my brief and argument I set forth the ludicrous facts and pathetic position of my client even more elaborately and extravagantly than I had

done in the answer in the Circuit Court. And by the time the case came on for argument in the Supreme Court, some idea of its character had come to the knowledge of the Court, and naturally the members of the Court gave alert attention. It was the only case, in all my experience, in which I sought to amuse the Judges, rather than help them. Judge William F. Cooper was then on the bench, and this trial was the only one I ever knew to break his sturdy judicial solemnity—he almost burst his sides with laughter. The case fell to him, and in a brief opinion he reversed the Circuit Judge and remanded the case with directions to the Circuit Court to issue the peremptory writ of mandamus.

The sequel was little less amusing. The case was continued in the Circuit Court on one pretext and another, for perhaps a year, when it was compromised and dismissed—each party assuming half the costs.

And thus ended this "much-ado-about-nothing" case. What became of the geese I never knew, and whether there was really another flock of "12 geese and 2 ganders" all "picked" on the same day in the spring and "marked with a daub of green paint on the right side of the head," will perhaps never be known.

I think frankness compels me to say, in closing, that the "Justice of the Peace" before whom this case was brought, was none other than my father.

IX

Jake Leech, his Reference to Judge Guild—Leech's Application for Continuance—His Argument after Change of Venue.

I HAVE recently referred, in these reminiscences, to Hon. Jake Leech. He deserves further attention. Mr. Leech, while a man of wit and keen sense of humor, had, nevertheless, a very grave countenance. His mouth drooped at the corners, he rarely smiled, and his face, even in the midst of his most ludicrous attitudes, bore every mark of earnestness, sincerity and candor. He seemed unconscious, always, of the humor of his antics. Drunk or sober, these characteristics seemed to attend him. His dress was slovenly, harmonizing perfectly with the character he assumed. He was in no sense a corrupt man, but it must be said that one could never be certain whether he was really in earnest or merely "acting."

One of my first recollections of him is of an address he made before a state convention for the nomination of a candidate for governor, long before my location at Nashville. I don't recall the date, but it was in the lifetime of Judge Jo. C. Guild, then quite an old man. Judge Guild had been discussed as a candidate for governor; and during a lull in the proceedings, while the convention was awaiting the report of the committee on permanent

organization, various speakers were called upon, as usual, to entertain the delegates, Mr. Leech among them. He had had a drink or two, but was thoroughly "at himself." He was a friend and admirer of Judge Guild, and made him the chief subject of his address. He dwelt upon his long career as a Democrat, climaxing one of his droll periods with this unique characterization, uttered with unsmiling earnestness and gravity:

"Gentlemen of the Convention, Judge Guild is one of the mud-sills of Democracy; and yet he is not an old man, though he lived in the days of Washington and Lafayette."

It was at the same convention, as I recall, and during the same interim proceedings between the "temporary" and the "permanent" organization, that another funny thing happened. A delegate from East Tennessee, about "three sheets in the wind," was on his feet trying to speak but making poor headway, when another delegate sitting near him interrupted and said, "Sit down, you're drunk." The speaker paused, and turning to the delegate replied, "Yes, I know I'm drunk, but that's temporary. You're a damn fool, and that's permanent."

Returning to Jake Leech, he made perhaps the most unique application for a continuance ever made to a Court of Justice. It was at Newburg, in Lewis County, soon after the formation of the county and at a time when both its court house and jail were rude wooden structures located in the woods, for the "county seat" had not yet become a town.

Leech had been employed to defend a man charged with some penitentiary offense, I don't re-

call just what. When the case was reached on the call for trial, substantially the following colloquy occurred between Mr. Leech and the Judge:

Leech: "Not ready, yo' Honah please."

Judge: "Present your application for a continuance."

Leech: "I've got none writ out, yo' Honah please."

Judge: "Then state your grounds."

Leech: "Well, yo' Honah please, in the first place, if the defendant goes to trial now, I'm afeard he'll be convicted and sent to the penitentiary. The state has got a whole raft of witnesses here and the defendant ain't got nairy one. In the next place, if the case is continued, the defendant will have a chance to break jail and git away. And then agin, it's fo' months till the next term, and in the meantime the woods might ketch a fire and burn up the jail, or the state's witnesses might die or move away, or the defendant hisself might die. And so, yo' Honah please, we ain't ready, and on these grounds we ask yo' Honah to continue the case."

Judge: "Well, Mr. Leech, that is the most honest application for a continuance that has been made since I've been on the bench, and it is granted. If none of these things happen, be ready at the next term."

The Judge was Hon. Elijah Walker of Savannah, as I recall, also a quaint character, but as different in other respects from Guild and Leech as day is from night. I may have something more to say of him later.

Leech defended a man indicted for a felony in Cheatham County. He applied for and obtained a change of venue, on the ground that the local

prejudice against his client was so great that he could not have a fair trial in that county. Cheatham County was the defendant's home, where he had been raised and was well known. Of course these proceedings for change of venue were not disclosed to the jury on the trial, at Nashville. Taking advantage of this fact, Mr. Leech spent most of his argument before the jury bewailing the fact that his "poor and helpless client had been forcibly dragged from his home and his friends and neighbors who had knowed him from boyhood and his honorable life, to be tried by strangers in a strange land," etc., etc. With well-feigned earnestness, and with tears in his eyes, he pleaded for the sympathy of the jury on account of this "great injustice."

In any other man, such conduct would have called for severe reprimand, but Jake Leech was Jake Leech—popular with all, and understood by all—and such things were passed by with a smile as part of the "day's work."

I know of no such lawyers now as Guild and Leech. Perhaps there will be no more, to further enrich the humor of the bar.

Whether this is well or not may be open to question, for humor is the spice of life, and though sometimes attended with crudities and occasional lapses from the proprieties, existence without it would be well-nigh insufferable.

X

Early School Days—Blab School—Cedar Mount—Mistaken Identity—School-boy Politics.

WRITING these rambling and incoherent reminiscences, I am tempted to recur to my early boyhood, though incidents of that period may be of little interest to most readers, except as they tend to show the primitive habits and customs of that time and region.

At seven years of age, I was sent away to school, at what was called Old Philadelphia, or Sorby, in Wayne County, near which lived my maternal grandfather, Abraham Montague, a notable character of the county, with whom I boarded.

I had been taught my "a, b, c's" at home, and was just beginning to learn my "a-b abs" in Webster's blue-backed spelling book—the principal textbook of the schools of that day. The teacher was "Uncle Billy Stanfield," as he was called, and the school was a "blab-school," the only one of the kind I ever attended, for, though they had been quite common, they were then going out of vogue. It was a school in which all the "scholars" got their lessons out loud—the school room during school hours being a veritable bedlam of noise, everybody spelling or reading or figuring at the top of their voices. I was a timid, shrinking lad, never having been among strangers before, and I never shall for-

get the fact that I got two whippings the first day—the first for not getting my lesson loud enough, and the second for getting it too loud—because of fright at the storming of the teacher. The method of whipping was to tighten the "britches" and cut across the calf of the leg a few strokes with a keen hickory switch—and it hurt, "I'm tellin' ye." I soon got in the harness and able to "go the gaits" with the other boys, and at the end of the term we got even with Uncle Billy by threatening to "duck" him in the creek, which ran near by, unless he "treated" us—and there were enough of us to do it, too; for Uncle Billy, though a heavy man, had but one leg, the other having been amputated just below the hip. He saw the "blood in our eyes" and yielded—and what do you suppose the "treat" was? We expected candy, but none could be had, and so it was a sack of old-fashioned brown sugar. That was just as sweet as candy, and we enjoyed it right heartily.

In those days mean people had a way of annoying school children, when passing a school, by shouting at them the well-known words of reproach, "school-butter." Shouting these words at school boys at play-time or recess was like shaking a red rag in a bull's face. Nothing could more enrage them; and many a chase of such a miscreant do I remember, but he always made his escape.

The following year, when I was eight, I remained at home and attended a neighborhood school taught by my father, at "Cedar Mount" church. The building was a long, large hewed-log structure, with the pulpit in the rear end, split-log, backless seats arranged crossways on either side of a central aisle. The teacher's place was in the open space in front

of the pulpit, commanding a full view of all the seats. When not engaged in hearing a recital, he watched the students closely, and when he saw one idling or engaged in any sort of mischief, he would throw his switch at him, which meant that he should come forward for correction—and even when hearing a recital, the teacher would watch the boys and girls in the seats as well as he could out of the corner of his eye. There was a very mischievous boy in school named Johnnie Owens—nearly always either idle or at some mischief. I prided myself in thinking I was a good boy; certainly I was neither idle nor given to mischief; but my father, the teacher, also called me Johnnie.

One day while my father was engaged in working out a difficult example in arithmetic for a student, his switch came sailing out towards me and fell between me and Johnnie Owens, and I heard the voice of my father calling, "Come here, Johnnie." I was busy studying my lesson at the time, and strictly behaving myself, but I saw that Johnnie Owens suddenly ceased the mischievous teasing of another boy in which he had been engaged and linked down to hard study, apparently. I thought the switch and call had been intended for him, but he made no move towards carrying up the switch. So I carried the switch to the open space in which my father sat and stood waiting his command. He paid no attention to me for some time, and until he had finished working the example, when he looked up and said, "Well, that switch was not intended for you, but I guess you are guilty or you wouldn't have brought it here." And so he proceeded to tighten up the cloth of my breeches and give me a

few sharp raps on the calf of my leg. That punishment rankled in my boyish heart for a long time, for I felt that it was nothing but rank injustice.

That was an election year, at least political discussion was rampant. The great parties then were the Whigs and the Democrats. Politics was in the school as well as on the hustings. I was a Whig, and, young as I was, I would make Whig speeches at playtime; so the boys nicknamed me "Gibbs," after the name of the Whig candidate for Congress in our district—an old wool-carder living at Clifton. I recall a funny thing that happened at a recess during that term, growing out of these school-boy political discussions. There were two grown boys in school of opposite political faiths—Joe Davis, a Democrat, and Tom Garner, a Whig. They had had a fight at the spout spring at playtime, the details of which my father was quietly investigating. It was a showery day, and at the afternoon recess I was spinning a top on a broad wet plank which lay on the muddy, slick ground in front of the schoolhouse, when Davis and Garner and some other boys came up and squatted around me to watch the top. Davis and Garner were squatted near each other. Suddenly Joe said to Tom, "I understood you said there ain't no honest Democrat. Did you say that?" Tom had to admit, though he did so hestitatingly, that it was true. Thereupon Joe sprang upon him like a cat upon a mouse, and flattened him out on his stomach on the muddy ground, hit him a few hefty licks in the back with his fist and then, pausing and gritting his teeth, said, "Tom Garner, I hate to kill ye." Tom begged piteously, for he was utterly helpless in the mud, and Joe

finally let him up, and he went to the spring, got under the spout and washed off the mud.

When the teacher called, "Books!" these two big boys were called up and the facts brought out, both as to the fight at the spring and at my top-spinning. My father then said to Joe and Tom: "Well, boys, you have violated the rules of the school, and you will either have to take a whipping or leave school. Which will you do?"

Joe was a short, stocky-built, fat fellow with a whispering voice—could not speak out loud, though his sibilant whisper could be heard many yards away. He spoke up immediately in answer to my father, and said, "I'll take a whippin' if you'll whip Tom Garner." My father said, "Well, Joe, you were to blame for this last fight, but Tom was at fault in the fight at the spring, and so I'll whip you both." And thereupon he proceeded to give both of them a thorough thrashing over the shoulders.

Joe Davis became a Confederate soldier and, poor fellow, died in the army. Tom Garner "joined the Yankees," survived the war and lived many years thereafter, a good citizen but always a Republican.

Joe Davis' father, Joseph Davis, Sr., lived a couple of miles above us, on the same creek, and was one of the best friends of my boyhood. He loaned me the first money I ever borrowed, a hundred and twenty-five dollars to buy a horse, before I was 20 years old, taking my note for the amount, due at twelve months, without security—I can see him now as he counted out to me twenty-five five-dollar bills. At the end of the year I sold the horse for one hundred and forty dollars, and when I paid the note the kind old gentleman refused to accept

any interest. He was a big-hearted, good old man of the "old school." Rest his soul in peace. I can never forget his kindness.

But who but myself can be interested in these ramblings? I wish I knew.

XI

Early Judges of Supreme Court—Judge Caruthers—Judge Wright.

ONE of the Judges of our Appellate Courts has asked me to write something of the earlier Judges of our Supreme Court whom I knew, and although I expected to do so later, I proceed to do so now.

Of course I do not propose anything like biographies of these early Judges—as I am wholly unequal to such a task for lack of knowledge and materials; but only to convey such impressions as I formed of them from my comparatively brief acquaintance with them.

Of the ante-bellum Judges of the Supreme Court, that is, those serving prior to the Civil War, I recall having met, personally, but two of them—Judges Robert L. Caruthers and Archibald Wright.

Judge Caruthers was senior professor of the Lebanon Law School during my attendance in 1870–71, and I knew him, I thought, quite well, but only as an instructor. I heard, however, while at Lebanon, many interesting stories about him and his career at the bar. He was a very dignified old gentleman, but by no means "stiff" or unapproachable; on the contrary, he was very companionable, and seemed to like the society of young men—and "the boys" all liked him. He was also quite a "character,"

which a writer in a recent issue of the Journal of the American Bar Association defines as "one who refuses to conform to custom and defies classification" —a "sui generis," unlike other men. Physically, he was of medium height, medium flesh, erect, of dignified carriage, clean shaven, and always neatly dressed.

Like most great men, he had a fine sense of humor; and he was fond of telling stories. I have known him to spend the whole class session telling stories out of his experience, illustrating the subject of the lesson, without ever opening the book or asking the class a question.

On one occasion that I recall, when the subject of the lesson was "Circumstantial Evidence," he spent the whole recitation period in relating a story of his experience in a murder case, given with infinite detail—the circumstances relating, not to the defendant on trial or the crime charged, but to one of the jurors, who had been the innocent victim of a set of unfortunate circumstances pointing to his guilt of certain misconduct, and who, on that account, could not be brought to convict on any sort of circumstantial evidence. This story was of absorbing interest to the "boys"—there were no girls in the class—but it is not appropriate for the printed page.

Our class—the senior for 1870–71—recited in a room of Judge Caruthers' residence. It was winter time, and there were only about twenty or twenty-five of us. The Judge's health had begun to fail, and it was not long afterwards that family troubles, which many of your readers may recall, came upon him, and he soon passed away. During his eight years' service on the Supreme bench, he rendered

many excellent opinions, which are often cited as authority in modern practice. While not generally classed among the ablest judges of that great Court, he was, nevertheless, by common consent, an able Judge, thoroughly grounded, especially in the practice, if not in the reason and philosophy of the law. He served from 1852 to the beginning of the Civil War—for a brief period as an associate of Judge Wright.

As a lawyer at the bar, he is said to have been almost invincible before a jury. It was a common saying that in a jury trial it amounted to a practical denial of justice to have him on the other side. It is one of the anomalies of the legal profession that great advocates rarely make great judges. It is usually the plodding, quiet, unobtrusive and comparatively obscure student of the law that makes the great judge—and there is a good reason for this, as lawyers understand. I have seen the fact demonstrated many times.

Judge Archibald Wright, appointed in June, 1858, to succeed Judge W. R. Harris, deceased, and elected in August of that year for a full term of eight years, served only about three years, until the courts were closed by the Civil War. He lived at Memphis, and was the father of Gen. Luke E. Wright, who also became a great lawyer and eminent citizen. It was in 1873 or 1874 that I first met Judge Wright, while we were both attending the Supreme Court at Jackson. Soon after we met he asked me to take an evening walk with him, and thereafter he extended several similar invitations, which I gladly accepted. He seemed to like young men, and although the disparity of our ages was, I should say, quite fifty years, his companionship was, to me,

most delightful. His firm at that time was, as I remember, Wright, Turley and Wright—the Judge, Luke E., his son, and Thomas B. Turley, afterwards United States Senator, succeeding Judge Howell E. Jackson. Turley was also a great lawyer and a very fine fellow.

Judge Wright, when I knew him, was quite an old man, but robust and strong, both physically and mentally. He was full six feet tall, or over, and wore a beard all over his face, but neatly trimmed and as white as snow. His face was usually lit up with a smile; his carriage and bearing were dignified and courtly; he was the very soul of courtesy, though frank, plain-spoken and unassuming—a typical old-fashioned Southern gentleman.

He was a fine lawyer and a great Judge; but if he had left behind him nothing but his son, Luke E., and his grandson, Eldridge Wright (Luke's son), he would have earned our veneration, for both became outstanding citizens, and leading members of the Memphis bar, in their day perhaps the strongest bar in the state.

Judge Wright's associates on the Supreme bench were Judges McKinney and Caruthers. Judge McKinney I never knew personally. Judge Wright, so far as I could observe, had no special sense of humor. He was a serious-minded, earnest man, and did not indulge, at least to my knowledge, in story-telling, and hence I know of no humorous incidents to relate of him.

In my next, I shall have something to say of the so-called "Brownlow" Judges of the Supreme Court—those who served between the close of the Civil War and the reorganization of the state under the Constitution of 1870.

XII

"Brownlow" Judges, so called—Shackleford—Alvin Hawkins and the Hawkins family—H. H. Harrison—Trial before Judge John Baxter.

THE so-called "Brownlow" Judges of the Supreme Court (so called because appointed by Governor Brownlow immediately after the Civil War, or by Andrew Johnson as Military Governor during the war and serving under the Brownlow régime), were, at first, Sam Milligan of Greeneville, James O. Shackleford of Clarksville and Alvin Hawkins of Huntingdon. Later, at different times, came in Horace H. Harrison of Nashville, Henry G. Smith of Memphis, Andrew McLean of Carthage, and George Andrews of Knoxville.

Of these I knew personally only Judges Shackleford, Hawkins, Harrison and Smith.

Judge Shackleford I met only once or twice and then only casually—heard him argue one case after his retirement from the bench. He did not impress me, either by his opinions while on the bench or by my observations of him, as a great lawyer or judge.

Judge Hawkins I knew well and intimately for many years. The Hawkins family, of Huntingdon, was quite a distinguished one for the eminent lawyers and judges it produced, and it was divided in politics—some were Democrats and some Republicans. Col. Issac R. Hawkins was a Colonel in the

Federal Army during the Civil War, and after the war one of the ablest and most spectacular advocates of his section of the state; his son, Sam Hawkins, was quite an able advocate and a great Republican politician, as was his father. Judge Lucian Hawkins was Chancellor of his division for a period immediately succeeding the war, and later a most successful practitioner for many years. He was of fine personal appearance, tall, erect, well filled out, of courtly bearing, quiet and taciturn when not arguing a case, but a veritable cyclone in argument, and gifted in elegant and forceful speech. He was a blond, and the handsomest of the family.

Joseph R., a half-brother of Judge Alvin, was Circuit Judge of his circuit, a Democrat and elected by Democrats, and afterwards a successful and able advocate.

Albert G., another half-brother of Judge Alvin, was for a long time Chancellor of his division, also a Democrat, and elected by Democrats, one of the cleanest and kindest of men, and a most excellent Chancellor. I practiced in his court many years and knew him intimately. All the Hawkinses were Republicans except Joseph R. and Albert G. and their immediate families.

Judge Alvin Hawkins was, as I recall, the oldest of the bunch. He was a very dignified and precise old gentleman of medium height and weight, also a blond, clean shaven, and always well dressed. He was a very painstaking man. His pleadings were always neat and to the point—he was a stickler for accuracy. His arguments in court bore these characteristics—he wasted no words. I always considered him a great lawyer—was with him, as associate or adversary in many cases, and I never knew

or heard of his doing or being suspected of doing a little or mean thing. He was truly an honor to his profession.

He had, apparently, no sense of humor—was impatient, really, of anything verging upon the humorous. He was elected and served a term as Governor, as a result of the split in the Democratic party on the state debt question.

Judge Horace H. Harrison, as I understood, was a Northern man, though I have since learned he was Tennessee-born, and I know nothing of his antecedents before he came to Nashville. He was, as I recall, Chancellor at Nashville for a short while. Later, and when I knew him best, he was associated in the practice with Judge John V. Wright at Nashville. He was a most elegant gentleman, not especially distinguished for ability as a lawyer, but a good lawyer nevertheless. I was engaged only in one case with him, and on the opposite side. A brief reference to this case may be of interest.

A negro had been lynched at Waynesboro by a mob of some eighty-odd persons, many of them prominent and wealthy citizens of Wayne and adjoining counties. The lynching took place in broad daylight on a Sunday. The sheriff had assembled in the county jail, a wooden structure, an armed posse in his effort to protect the negro in his custody. The mob made a feint of burning the jail—approaching it at an end without a window, where they could not be seen, and raising a "smoke" which the sheriff on the inside thought was from the burning jail. Thereupon the sheriff unlocked the cell in which the negro was confined—the only prisoner—told him to escape if he could, opened fire on the mob and, after receiving a slight wound in the

arm, left the jail. The negro leaped out behind him, and over a fence into a cornfield, where he was pursued and killed. The mob had returned the fire of the sheriff, who, as above stated, received a slight flesh wound in the arm.

The sheriff immediately resigned his office and moved to Alabama, in order to establish a residence there and give the Federal Court jurisdiction of a suit which he contemplated bringing for damages against such members of the mob as could be identified; and at the succeeding term of the Circuit Court of Wayne County, occurring a few weeks later, he appeared and sought to indict some 15 or 20 members of the mob for the murder of the negro and a felonious assault upon himself. The grand jury refused to indict for the murder of the negro, but returned an indictment for the malicious shooting of the sheriff.

Thereupon, while this indictment for malicious shooting was pending, the sheriff came to Nashville and through Judge Harrison and Judge John V. Wright brought suit in the Federal Court for $50,000 damages against the indicted persons, for the malicious assault upon him; and at the same time, by ancillary bill in equity, attached their property amounting in value to much more than the amount sued for. I was employed to defend.

The suit for damages was tried before U. S. Circuit Judge John Baxter and a jury. Judge East of Nashville was associated with me, and Judge Arch M. Hughes, Sr., of Columbia, volunteered to assist us. It was my first appearance before Judge Baxter, who was reputed to be a great tyrant on the bench, merciless and overbearing towards the lawyers, and I dreaded the ordeal, especially as the

case was of a kind calculated to arouse the partisan feelings of both Judge and jury—all being, at that time, Republicans, with no sympathy for any one supposed to mistreat a negro.

The case was set for 9 o'clock on a Monday morning. Numerous depositions had been taken by both the plaintiff and defendants, and about a dozen witnesses for each side were in attendance to be examined personally. I had prepared an elaborate brief on a certain legal question involved, and this brief, with a valise full of legal authorities in support of it, I had brought to Nashville with me. Having no doubt that the evidence would more than occupy the day, I left my brief and authorities at my hotel.

The plaintiff read through one long deposition without interruption by the court. When the reading of the second deposition had proceeded far enough to show that it was upon the same line as the first, the Judge interrupted and asked if the whole deposition was to the same purport as the first, and when told it was, directed that it be considered as read, and laid aside. The other depositions were disposed of in the same way, and the plaintiff called his first witness. It soon developed that his testimony was along the same lines as the deposition that had been read. The Court thereupon directed that this witness stand aside. The other witnesses were disposed of in the same short order; and within an hour the plaintiff's case was closed. Our depositions and witnesses were disposed of in the same summary way; and before 11 o'clock the stage was reached for the argument.

Two hours on a side were allowed for the argument. On our side it was agreed that Judges East

and Hughes should have 30 minutes each, and I one hour to close for the defendants. Judge Harrison opened for the plaintiff with a short address of less than 30 minutes; and Judges East and Hughes followed with their 30 minutes each, and then it came my turn, about an hour before adjourning time, 1 o'clock; and there I was, without my brief and authorities. I was then a comparatively young man, and quite boyish looking.

I arose and made a frank statement to the court of my situation—to the effect that I had prepared a brief on a certain question that I thought vital to the case, and which had been assigned to me to present, but that, assuming the evidence would occupy the day, I had left the brief and numerous authorities in support of it at my hotel, and that I would be obliged if the court would adjourn then and allow me to proceed at the afternoon session. The Judge at once turned to the jury and said, "Gentlemen, you are discharged until 2 o'clock."

The question I had briefed was: Whether in a case like the one in hand, where the tort or wrong sued for was also a crime punishable by the criminal courts, punitive or exemplary damages could be allowed. My contention was that, inasmuch as the reason for the allowance of punitive damages in a civil case was, not that the plaintiff was entitled to them, but that the defendant ought to be punished for his gross wrong; and that, as his wrong was not a crime and could not be punished criminally, there would be no means of making an example of him for the deterrence of others from like wrongs unless he could be punished in the civil case—therefore the rule of punitive damages was limited to such cases. In short, that the object of punitive damages in a

civil case was precisely the same as that of fine or imprisonment in a criminal case, and, in principle, such punishment was not allowable in a civil case where it could be administered in a criminal case for the same wrong; and that, to allow it in both cases would be double punishment for the same offense, and violative of the Constitution.

I was aware that the Supreme Court of Tennessee had ruled against my contention, but argued that such ruling was wrong in principle, and that the Federal Court was free to rule the other way.

Judge Baxter listened to me most courteously for nearly two hours, removing all limitations as to time, and asking me, in the kindliest way, many questions. And when he came to charge the jury, which he did in a quiet and most impartial and dispassionate way, he said to the jury, in concluding, that he had been much interested in the argument on punitive damages, and personally concurred in many of the points presented, but that he felt himself bound to follow the decisions of Tennessee; and so, if the jury thought proper, they might, in this case, allow the plaintiff something over compensation for his injury, by way of punitive or exemplary damages.

The result was a verdict for $5,000, which was subsequently compromised and settled for about $3,000.

I was never treated more courteously by any Judge than I was by Judge Baxter in this case. And I want to say of him in conclusion, for I had many subsequent observations of him, that in my opinion he was one of the clearest headed and ablest judges that I have known. He may have had his faults, as few men are without them; but when

it came to looking at and dealing with the very heart and vitals of a complicated case, he had few superiors.

I find I have wandered too far to return to Judge Henry G. Smith, to whom I will give some attention later.

XIII

Judge Henry G. Smith—W. G. Brownlow—Judges Elected in 1870—Judge A. O. P. Nicholson, first Chief Justice.

IN MY last reminiscence I promised to return to Judge Henry G. Smith, one of the so-called "Brownlow" Judges of the Supreme Court. And, by the way, I may say in this connection that William G. Brownlow was, in ante-bellum days, very greatly admired by my father—in fact, he was my father's hero. Both were Methodists—Brownlow was a Methodist preacher—and both Whigs. Brownlow was editor and proprietor of "The Knoxville Whig," of which my father was a constant reader. He named a son for him—giving him the full name, "William G. Brownlow," who is still living and called by his familiars "Brownlow." Brownlow had also written a book in answer to "The Great Iron Wheel," a book of religious controversy written by John R. Graves of Memphis, a Baptist, and this book by Brownlow also fascinated my father. Needless to say, when the war came on and my father joined the Confederate Army, and Brownlow championed the other side, my father's adoration of him changed into hatred, and many were his expressions of regret that he had named a son for him—a vindication of the adage that no child should be named for a living man.

Judge Henry G. Smith was, as I recall, a Northern man, coming South during or at the close of the Civil War and locating at Memphis. He was a magnificent specimen of the genus homo, tall, erect, portly, handsome, of a most dignified and courtly bearing. His manner of speech was extremely "yankeeized," and his methods of thought and expression most peculiar and difficult to describe. This will be apparent to any one reading his opinions, of which the Coldwell Reports contain several. He resumed the practice at Memphis when he left the bench, and I heard him argue many cases in the Supreme Court at Jackson. His arguments were clear-cut and forcible, though very deliberate and unimpassioned. He stood high at the Memphis bar, and was undoubtedly a man of culture and an honor to the profession. If he ever indulged in humorous play, or in any form of frivolity, I never knew or heard of it—he was too dignified and "stiff" for anything of the kind.

Of the "New Bench," elected under the Constitution of 1870, I shall have much to say. My first vote was cast at the August election of that year, at which most of the judges and chancellors of the state were chosen; it was during the summer vacation of the law school I was attending—and if my memory serves me correctly, I have failed to vote at only two regular elections since, and these were when I was not in the state.

The work of the Supreme Court, in 1870, had fallen far behind, and in view of this fact, the schedule of the Constitution of that year provided for the election, at first, of six Supreme Court Judges, although the permanent court was to comprise only five—the first vacancy occurring after January 1,

1873, not to be filled; and while the court was comprised of six Judges, it was authorized to sit in two sections, of three Judges each, so as, practically, to double the dispatch of business.

The six Judges elected in 1870 were: From East Tennessee, T. A. R. Nelson (who had been one of the counsel of President Andrew Johnson in his impeachment trial in 1868) and James W. Deaderick; from Middle Tennessee, A. O. P. Nicholson and Peter Turney; and from West Tennessee, Thomas J. Freeman and John L. T. Sneed.

Judge Nelson resigned in 1871, and Robert McFarland of East Tennessee was first appointed to succeed him in December of that year, and then elected in August, 1872. Judge Nicholson was made Chief Justice, and served in that capacity until his death in 1876, when he was succeeded as Chief Justice by Judge Deaderick. His place as Judge and member of the court was never filled—the court, after that date, being constituted of only five Judges.

At the meeting of the Supreme Court in Nashville on March 24, 1876, the day after Judge Nicholson's death, his death was announced, and an eloquent tribute paid to him in an address delivered to the assembled Judges and lawyers by Judge Sneed, which is reported in an appendix to the ninth volume of Heiskell's Tennessee Reports. May I take the liberty here of quoting a brief extract from Judge Sneed's address? After recounting the numerous places of trust Judge Nicholson had held and briefly reviewing his life-work, the address climaxed with the following eloquent summary:

"I will not undertake to describe the texture of

his extraordinary mind, nor to estimate here the value and extent of his public services. His speeches at the Bar, in the Legislature, in the Constitutional Convention, upon the hustings, in the United States Senate, his several revisals of our statute laws, his literary addresses, his great career as a public journalist, and his opinions delivered from this bench, all constitute a monument to his fame, compared to which,

'The trophied urn and sculptured bust
Would be but mockery of his dust.' ''

On the same day, upon the adjournment of the court, at the suggestion of ex-Governor Neil S. Brown, a meeting of the bar of the state was held in the Supreme Court room, at which many eloquent tributes where paid to Judge Nicholson, and a committee appointed to prepare suitable resolutions, which were adopted. These proceedings are also recorded in the volume above referred to. The resolutions reviewed, at some length, the life and work of Judge Nicholson, and contained, among many other fine passages, this hardly exaggerated conclusion:

"Although he had not quite measured out the brief span allotted to humanity by the inspired writer, yet, when his work is taken into consideration, he has lived thrice that period of ordinary mortality. He may be said to have died full of years, and full of honors. And he had all 'That which should accompany old age, as honor, love, obedience, troops of friends.' ''

I may add that some four or five or more years ago, at the request of the Nashville Bar and Library

Association, I prepared an "In Memoriam" review of the life and work of Judge Nicholson, which I presume is still among its archives—it has never been published.

I did not know Judge Nicholson personally until after he became Chief Justice of the Supreme Court. And even then my association with him was only such as might be expected between a young up-start lawyer and a venerable nestor of the Judiciary. I remember him as a very dignified, rather stoop-shouldered, gray-haired and gray-whiskered, solemn and venerable old gentleman, presiding over the highest court of the state. His opinions, many of them at least, were long and wordy, but well-reasoned and profound. If there was any humorous or lighter side to his life, I never observed it, although, as I have stated, I had scant opportunity to do so. No doubt all the fine things said about him by his funeral eulogists were perfectly true.

He was, perhaps, the most versatile of all our judges—statesman, legislator, politician, journalist, littérateur, lawyer, judge—in all of which positions he was distinguished. Undoubtedly he was a faithful and efficient public servant, deserving the grateful remembrance of his fellow citizens and their posterity.

Notes on the other Supreme Court Judges above named will have to be deferred to another occasion.

XIV

Judge Deaderick—Judge Turney (Jake Fisher incident)—Reflections on Forms and Methods of Opinions.

JUDGE James W. Deaderick, a member of the Supreme Court from 1870 to 1886—sixteen years, or two full terms—and Chief Justice for ten years of that time, was also quite an elderly man when elevated to that bench. He was "strictly business," but very considerate, kindly and courteous, presiding with quiet dignity. His very presence inspired and commanded profound respect on the part of every one. He was very reserved in manner, had not much to say, but what he said was to the point. His opinions were usually brief, but clear and explicit. As indicated by his long-continued service as Judge at the suffrage of the people, and as Chief Justice at the suffrage of his associates, he gave unalloyed satisfaction in both capacities, and finally voluntarily retired from public life at a ripe and honored old age, carrying with him what the eloquent tribute to Judge Nicholson, quoted in my last reminiscence, said should accompany old age—"Honor, love, obedience, troops of friends."

Judge Deaderick was a low, rather squatty man, broad-faced, clean shaven, with tightly compressed lips, and he spoke in a firm, distinct and staccato manner—wasting no words, and leaving no doubt

of his meaning. It is hard to say, from my recollection of him, whether in his younger days he was brunette or blond, for he had no beard, and what little hair he had when I first knew him was white. His eyes were a dark gray, not black. His cast of countenance was serious and benign, and his lips compressed with apparent effort, although he possessed a quiet but seemingly restrained humor, which sometimes broke forth despite his efforts to suppress it. He was a lovable old gentleman, of maidenly purity of thought and speech, and if ever there was a word of criticism of him or of his work, I never heard of it.

His successor as Chief Justice was Judge Peter Turney, the only member of the old court re-elected in 1886. Of Judge Turney very much might be said. He was a "character"—one who refuses to conform to custom and defies classification. He was an officer in the Confederate Army, and had been wounded in the mouth, which somewhat impaired the distinctness of his speech, but was a comparatively young man when elevated to the Supreme Bench in 1870—an extreme blond—some people called him red-headed. And this reminds me of a funny thing that happened at Jackson during the Chief Justiceship of Judge Deaderick, and while Judges Turney and McFarland were members of the Court, which I may here relate.

One Jake Fisher, a rich but impulsive, profane and unlettered old farmer of Decatur County, and habitual bondsman for men indicted for crime, had appealed to the Supreme Court from a judgment against him on such a bond, for about $1,000. Fisher was a "tight-wad," and the thought of having to pay out and lose such a sum of money rankled

in his heart. He came to Jackson to hear his case argued, and talked about it with every one he met. It was decided against him, by Judge Turney, on the following Saturday after the argument and Fisher was in the court room at the time. He prevailed upon his lawyer, Jo. R. Hawkins of Huntingdon, as I recall, to immediately file a petition to rehear; and at that time it was the usual custom of the court to dispose of such applications on the following Saturday; so Fisher stayed over to hear the result. In the meantime he was almost constantly engaged in discussing his case with his acquaintances on the streets, usually with several drinks under his belt—for he was a drinking man and there were plenty of saloons. On the following Saturday, Fisher was seated in the court room when the court met for the delivery of opinions. His case, on petition to rehear, had fallen to Judge McFarland, who denied the petition, affirming Judge Turney and the court below.

Fisher left the court room with the smile of victory on his face, and as he walked down the steps he met a friend who asked, "Well, Uncle Jake, how did you come out?" His reply was:

"Oh, I lost the case, but I made that damn redheaded guy git him a lawyer!"

When told this story, Judge Turney goodnaturedly laughed heartily over it. The Judge was of a waggish turn or disposition, had a high sense of humor and enjoyed jokes, even upon himself—a sure test of the good-nature of the man.

Judge Turney became a candidate for governor in 1892, while still Chief Justice of the Supreme Court, and what appeared at the time to be his greatest practical joke was perpetrated by him in connection

with that campaign. William H. Carroll of Memphis had been a practicing lawyer in the Supreme Court during the entire term of Judge Turney, and every one of his cases that fell to Judge Turney had been decided against him, every one—I heard him state this fact to Judge Turney; and yet Judge Turney selected him to manage his campaign for governor, and he did so successfully. The two men were much alike in their temperaments and dispositions—both wags, given to practical jokes, but faithful, staunch and reliable in their friendships.

Judge Turney did not resign his judgeship, but continued in that office until it was vacated by his induction into the office of governor, when he appointed John S. Wilkes of Pulaski as his own successor as Judge. He was criticized by some narrow-minded persons for not resigning; but he pursued the course he did in order to prevent his Republican predecessor, in office at the time as governor, from appointing his successor as Judge. His appointee, Judge Wilkes, proved to be one of the ablest judges that ever sat on that bench; so, undoubtedly, despite all criticisms, the old saying may be applied that "All's well that ends well."

Judge Turney was not, I think, in the judgment of the bar of the state, a very profound lawyer—not a student, nor specially gifted with analytical qualities of mind—but he was a man of the strongest common sense and clearest perception of practical justice, with a genuine abhorrence of all forms of fraud and dishonesty, and his decision of a case was very apt to be dictated and guided by these principles. At the beginning of his career as Judge, his model, I thought, was Judge Turley. He imitated the methods of Judge Turley in the framing of his

opinions—going at once to the heart of the case, and deciding it, and giving briefly his reasons later, with little or no citation of authorities. Later, his opinions became longer and more elaborate, but the Turley method he never entirely abandoned.

I hope I may be permitted to say here, without impertinence, that I think it unfortunate and regrettable that this "Turley method" of deciding cases has not been more generally observed by our Judges. Modern decisions, I think, are sought too much to be based on so-called precedents—decisions in other cases, by other courts, and in other states and countries, on widely varying states of fact and under systems of jurisprudence different from ours —rather than upon reason and manifest principles of justice. This tends to impair the autonomy of our system, to rob the law of its scientific aspect, and to convert lawyers from students of the principles and analogies of natural justice—said by Lord Coke to be the "essence of human reason"— into a band of searchers after cases. The idea of our great jurists, Blackstone, Chitty, Kent and John Marshall that the body of laws which should govern in any age, such as the common-law, are not "created," but, like Topsy, just "grow," is, I think, the true idea. It is always "up to date," fits the times, the customs and habits of the people among whom it prevails, and, when intelligently applied and administered, is the best and safest guide.

Nothing, I think, is so much debasing, deteriorating and undermining our American system of laws as the teaching of law students from "reports of decided cases" rather than from textbooks which treat of the general and fundamental principles and

analogies of the science of law. But I am perfectly aware that my feeble voice of protest will not stem this vicious tide that is gradually drifting us out into a sea of chaos.

To your lay readers, especially, I apologize for this digression, which they may deem dull and impertinent philosophizing.

In my next I shall have something to say of Judges McFarland, Sneed and Freeman.

XV

Judge Sneed—Judge Freeman—Wayne County Negro's Case.

JUDGE John L. T. Sneed, member of the first Supreme Court elected under the Constitution of 1870, was the ornate or literary member of the court. His knowledge of the law, in the judgment of the bar, was not very profound, but he was a brilliant writer, and his opinions most entertaining reading. He was a large and handsome man and a perfect Chesterfield in manner, of rather dark complexion, clean shaven, and habitually wore his hair long, and dressed elegantly—usually wearing a long Prince Albert coat, and even in the summer time his light "alpaca" sack came almost to his shoetops. His personality was striking—would attract attention in any company; and he was exceedingly cordial, even jovial, in his association with his friends and acquaintances—on the whole, a most delightful companion and lovable man. His home was at Memphis, where he was quite popular with the bar, as he was everywhere.

He resumed the practice, at Memphis, upon his retirement from the bench, but, so far as I know, never attained to any special prominence—seeming to be overshadowed by the younger and more active lawyers.

Judge Thomas J. Freeman, whose home was at

Brownsville, was a splendid man of the old school, with no eccentricities or peculiarities distinguishing him from other men of his class—plain, unassuming, sociable and friendly. He was of medium height and size, wore a full beard, which was gray, and dressed plainly but in good taste. He was neither notably solemn nor notably frivolous in his conduct and bearing—just a plain, unaffected, ordinary fine Southern gentleman and lawyer. I was more intimate with Judge Freeman than with any other member of the court—felt less hesitancy and embarrassment in approaching him when in trouble. I may be pardoned for relating an incident illustrating the freedom I felt in approaching him. It also illustrates the sturdy honesty and love of justice of one of our great Circuit Judges whom I have mentioned in these reminiscences—Judge Thomas P. Bateman, of Savannah.

I defended a negro boy indicted in Wayne County for burglary with intent to rape. Without giving names or detailing the facts, I may say, the boy lived with a widow and member of the family that had owned his parents in the days of slavery, for whom his young wife was cook and he a farm hand. The incident out of which the prosecution grew, when it first occurred, had been treated lightly, as of no importance, for several weeks. Finally, the incident having become the subject of gossip in the neighborhood, and been added to and embellished, as gossip has a way of doing, and having come to the ears of the brothers of the widow lady with whom the negro boy and his wife were living—a very intelligent, handsome and fine woman—they caused the negro boy to be arrested and arraigned before a justice of the peace, a cultured old gentle-

man who had represented his county in the legislature and the father of one of the present leading lawyers of Middle Tennessee, who heard the evidence and discharged the negro, who went back home to work. Dame Gossip again got busy, adding frills and furbelows, and arousing feeling against the negro; and so, after a few weeks, the brothers caused him to be again arrested and arraigned before another justice of the peace who committed him to jail, and he was indicted by the grand jury at the next term of the Circuit Court. He was immediately put upon his trial, convicted, and his punishment fixed by the jury at seven years in the penitentiary. Threats of lynching the negro, if acquitted, had been whispered around, and the air was laden with a suppressed feeling of excitement that we thought endangered the negro's life if a new trial should be granted and he should remain in jail in the county until the next term; so, arrangement was quietly made to hurry him off to Columbia for safety until the next term, and a new trial was granted and the case continued. There was some muttering at this result, but no outbreak—the crowd feeling sure of the negro's conviction at next term, though there was no shadow of ground for finding him guilty.

At the next term the threats of lynching in event of acquittal were even more outspoken. The case was tried, as diplomatically as possible, resulting again in a conviction, but this time with a smaller sentence of five years. There were a half dozen or more saloons in town at that time, and there was much drinking, and many persons armed. The crowd seemed satisfied with the result of the trial; but it was quite obvious that to set the verdict aside

and grant a second new trial would produce a lynching. Judge Bateman was presiding and was fully aware of the situation. I went to him privately and said that I felt, as I was sure he did, that the negro was not guilty and ought not to be punished; and that my plan was to take the case to the Supreme Court and if possible get its opinion on the facts, which I hoped would shame the prosecutors into an abandonment of the case; and that in order to do this I would have to make a motion for a new trial and have him overrule it; and I requested him to overrule the motion and let the case go up. His reply was—to use his own words: "Well, I'll do that if you request it, but, by G—d, I'll put in the order the reason why I do so." And so my motion to set aside the verdict and grant a new trial on the facts was overruled by an order reciting—again to use its words—"that, to grant it, would cost the defendant his life."

The defendant appealed. The district attorney general was a fair man, and agreed with me upon a fair bill of exceptions setting out the evidence.

And this brings me to Judge Freeman again; but before coming to him, let me say a word about Judge Benj. J. Lea, who was then attorney general for the state. I took the record to Judge Lea, a fine old gentleman, fair, honest and frank, and later himself a member of the court, and laid before him a history of the case, with my object in appealing. I asked him to read the record carefully, and suggested that if he agreed with me that the negro was innocent I should be obliged if he would cooperate with me in obtaining a written opinion of the Supreme Court on the facts. He made no promise beyond an assurance that he would look into

the case and do what he thought was right.

The court was then accustomed to delivering many decisions orally—announcing simply that the case was affirmed or reversed, with no reasons stated for its action. This I wished to avoid; so I went to Judge Freeman, at his chambers and stated the whole situation to him, emphasizing my belief that a written opinion upon the facts, from the Supreme Court, was probably essential to the saving of the negro boy's life, if the case should be reversed, and asked him to use his good offices in securing such an opinion, that would go down with the procedendo when the case should be remanded to Wayne County, as I had no doubt, from my knowledge of the court, what the result of that opinion would be. He likewise made no promise but I felt sure from our interview that he would do what he could.

When the case was called for trial I presented the facts as fully and forcibly as I could; and Judge Lea then arose and stated substantially that he concurred with me as to the facts, and that in his opinion there was no merit in the prosecution. Ordinarily, the case, under these circumstances, would have been reversed orally from the bench without any written opinion; but the court took the record, and on the following opinion day, Judge Freeman delivered a lengthy opinion, reviewing all the facts, and concluding, in substance, that the record not only failed to show any evidence of guilt, but disclosed affirmatively the defendant's innocence, and reversing and remanding the case. This opinion, of course, went back to Wayne County with the procedendo. The clerk told me afterwards that the prosecutors came into his office and read the opinion, and quietly walked out without saying

anything. At the next term the case was voluntarily dismissed, the negro went back to work, at his former home, and there was never any more trouble so far as I ever heard.

The comforting reflection from this incident is, that the rights and lives of even the most friendless are safe in the hands of such men as Judges Freeman, Bateman and Lea.

Judge Freeman, after his retirement from the bench, located and practiced for a while at Nashville; but his health was not good, and he soon passed out of the public view. He was not accounted as among our ablest judges, although he was a fairly good judge. His opinions were usually quite lengthy—some thought "wordy"; but generally clear and well-reasoned. I personally know that the campaign of his protégé, Judge W. C. Caldwell, who ran against him and beat him for judge in 1886, greatly embittered his subsequent life.

A few words concerning Judge McFarland and I shall close.

On reflection, I feel that I should say more of Judge McFarland than is permissible here without making this reminiscence too long, and so, au-revoir.

XVI

Judge Robert McFarland.

WITH this reminiscence of Judge Robert McFarland I shall close, at least for the present, as to the Supreme Court Judges for the first sixteen years after the adoption of the Constitution of 1870. I may hereafter come back to some of the later judges of that great court who have passed away; but, for the time being, shall go to subjects of perhaps more popular interest to your readers.

I am inspired with a feeling of indescribable awe when I approach the subject of Judge McFarland. He was, to my mind, the ideal judge and man. I distrust my ability to describe him, and especially his mental and judicial qualities.

Personally, he was of medium height, slender, erect, of rather dark complexion, clean shaven, of classic features, and the very embodiment of maidenly modesty and purity, quiet dignity, self-possession and kindliness. No one could know him but to admire and love him. Needless to say, his dress was always in harmony with his character. He seemed, in a measure at least, to follow the advice of old Polonius to his son:

"Costly thy habit as thy purse can buy,
But not expressed in fancy; rich, not gaudy,
For th' apparel oft proclaims the man."

It was so with Judge McFarland. His dress, the unostentatious and unstudied neatness of the man, the modest and apparently natural elegance of his person, indeed proclaimed the manner of man he was.

He died on October 2, 1884; and on October 8, at a meeting of the bar of the Supreme Court at Knoxville, a tribute was paid him, prepared by the eloquent pen of Hon. H. H. Ingersoll, which may be found in an appendix of the 81st Volume of Tennessee Reports (13th Lea). I can not do better than to quote here some extracts from this eloquent and well deserved tribute:

"Considered as man or judge, the simplicity and purity of his character is a delightful object of contemplation. His sentiments were lofty and noble, his demeanor modest and unassuming—even to diffidence. He was kind, liberal and generous, slow to promise, scrupulously faithful in performance; grateful for personal favors, and never forgetful of obligation. Though lacking in effusive affection, there was unswerving fidelity in his friendship. Strong in convictions of right, he was singularly free from bigotry and fanaticism. Courteous and polite in his association, he had many friends; but his confidence and intimacy were reserved for a few. He met cordially men of all classes, but commanded respect for his office from all by the quiet dignity of his character and unpretentious purity of his life. He was no politician, and no one ever suspected him of favor or policy in his judicial office. He was religious, without display or pretense, charitable without boast or ostentation, tenacious of truth and consecrated to duty. Free from ar-

rogance, vanity or self-seeking, he devoted his life to the study and exposition of the law, and was ever strong to execute justice and maintaïn truth."

So much of the man. Of the lawyer and judge, it was said:

"He was a born lawyer—a judge by nature. He had a logical mind, patient of investigation and trained by reflection rather than much reading. He was singularly free from bias or prejudice, and if as a judge he was not famed for erudition, he fully compensated for its absence by an accurate discrimination, sound judgment and rare practical wisdom. In clearness of vision and perspicuity of statement he was pre-eminent—unrivaled. None ever had occasion to distrust his knowledge of the case, or doubt the meaning of his opinion.

"His disposition and habit was, if possible, to solve doubt and determine cases by the application of fundamental principles of law to the facts. In this he resembled the great Chief Justice Marshall; and, like Marshall, too, his judicial style was dry and unadorned, void of simile and metaphor and rhetoric. No one will ever seek his opinions for beauty of style or wealth of illustration. But he never failed to be clear and convincing; and though his opinions may not abound in citation of cases to support them, one feels at the conclusion the same serene satisfaction experienced in finishing a geometrical demonstration or a logical syllogism. . . .

"No impertinent suggestion, no extraneous consideration ever seemed to divert his mind from the matter to be decided. So entirely judicial was he, so devoted to the solution of the problems before

him, that nothing ever seemed to interrupt his steady and even progress to a conclusion; this was reached only after a painstaking investigation and impartial consideration of all the material facts in the case before him. His personality, never obtrusive, was lost or rather absorbed, in legal reflection; so that when he announced his decision, it seemed to the bar, not so much the opinion of the court, as the logical, solemn and inevitable judgment of the law."

I can personally verify every sentence of this eloquent tribute. It was justly deserved. In my opinion the nearest approach to Judge McFarland, in characteristics of person and judicial methods, among all the deceased judges of that great court whom I have known, was Judge John S. Wilkes, of whom I may have something more to say hereafter.

I may add one quality Judge McFarland possessed, not mentioned in Judge Ingersoll's tribute, perhaps because it was so fine and delicate and so seldom manifested, that it either escaped his notice or was deemed by him unimportant—and that was, his keen sense of humor. He did not indulge in story-telling, nor appreciate rough jokes, but no really humorous situation could escape his observation, nor, if occurring in a case with which he was dealing, his artful and delicate mention. I have been witness to many such incidents, and a few of them occur in his published opinions.

XVII

Scenes of Childhood and Boyhood life—Removal to Hardin County—The Old Cabin Home—Game, Fish and the Maple-Orchard.

ALTHOUGH I may seem to descend from the sublime to the ridiculous when I pass from grave reminiscences of our great Supreme Court Judges to the trivial affairs of boyhood life and other commonplace things, yet we cannot ignore the fact that—

"A little nonsense now and then
Is relished by the best of men."

And this is my excuse.

I have been urged by some of your readers to add further reminiscences of my early boyhood and school-day life, and life upon the farm. This is such a fruitful field that it is difficult to determine just where to begin. And so, I suppose I can do no better than to begin at the beginning, and start with my earliest recollections.

The first thing I can recollect is the moving of my parents from Wayne to Hardin County—to the little sway-backed, chinked-and-daubed, stick-and-clay-chimneyed cabin home in which we lived the first year after our migration. This occurred in the winter of 1851–2, when I was about two and a half years old. Strange as it may seem, I can remember as distinctly as if it were yesterday how

that old cabin looked as we approached it in the ox-wagon in which we moved. It was the only building on the 160-acre "farm," if such a body of land, in the woods, may be called a farm. A small patch of three or four acres had been "cleared" and the cabin sat back in the midst of it with its side and only door facing the rude country road by which we approached. The thing which struck me most forcibly was the way in which the roof—the "ridge-pole" and other supports—swayed and sank down in the middle as if it meant to fall in.

This cabin was about 18 feet long by about 12 feet wide, built of round poles of oak, the gables built up to the "comb" above the "eaves," of the same material, and the roof of rough 4-foot oak boards supported on similar oak poles extending from end to end with no middle supports underneath; the loose boards were held in place by similar poles placed on top and "scotched" at the ends, with loose stones placed along them to add weight and prevent the whole from being blown off by the wind. This weight caused the whole roof to sag down in the middle without spreading the walls, and gave the cabin a weird and ancient look that so impressed me that I never shall forget it.

The cracks between the poles of the walls were stopped with "chinks" and clay, on all sides and ends up to the roof; there were no windows, and but one door; there was a broad fireplace in the "stick-and-dirt" chimney at one end, lined with flat stones set on edge, and an extensive hearth of the same material, where all the cooking was done; the floor was of clay, a little elevated above the outside ground, and smoothed and patted down firm so that it was dry and hard even when it rained.

The door was a "batten" door, hung on rough iron hinges made in a blacksmith shop, and held "shut" with a wooden latch.

Such was the "fine country home" we occupied during the major part of the first year of our new location. We had at that time three slaves—old Balaam and his young wife, Mary, the cook, and Tyler a boy a few years older than I and my playmate. Just where they stayed during that first winter and spring I do not distinctly recall—no doubt under temporary sheds; for we expected to build better quarters as soon as possible, which we did the following summer.

And I remember just as distinctly the construction of our new home the following summer, of 1852—recall being in the woods with the men cutting and hewing the long, broad poplar logs for the walls; and the "house-raising" when, with the aid of the neighbors, the walls were raised—the huge flat logs neatly notched and fitted at the corners—and I recall the fine dinner we had that day, of beef, and pork, and chicken, and turkey, and cakes, and pies, and good hard cider (though I don't remember where we got the apples to make the cider).

This was quite a pretentious house, for the times. It was about 20 feet by 30 feet, two stories, with dressed pine floors above and below, though not of "tongued and grooved" plank—just plain plank from the mill, dressed with a plane, by hand, of unequal thickness, and the up-truding edges smoothed off with a foot-adz. There was a fine stone chimney and fireplace, made from limestone rock quarried in the neighborhood—and the building of which by Wilson Grimes, a neighbor of my grandfather, occupied more than a month. Every stone was care-

fully hammered. I remember standing for hours at a time watching Mr. Grimes peck at those stones and carefully put them in place.

We also built, at the same time, a kitchen, and cabins for the negroes, and a little later, cribs and stables. From the beginning our supply of hickory-nuts and walnuts and chestnuts was abundant. The forest was virgin and nut-bearing trees abounded; and it was only a short time until we had an abundance of fruit—peaches, plums, apples, pears, blackberries, raspberries and strawberries—in fact, there were good orchards in the neighborhood when we came, and the use of the fruit was free to all.

And fish and game. Oh, my! We lived on a fine fishing stream—Hardin's Creek, and all around us were miles and miles of woods alive with game. Squirrels, rabbits, opossums, quail, doves, ducks, turkeys, and deer were plentiful; and fish—there was no end to them. My father spent most of his time hunting and fishing; and from my earliest recollection we had either fish or game on our table several times every week, in season. One could go to the creek with a bucket of minnows any day and catch as many fine trout in a couple of hours as he could carry home, or with a can of worms, or a wasp-nest, catch a string of perch that would feed the whole family; and many a time in my boyhood have I gone out into the "woods-lot," just over the yard fence, with my little single-barreled, muzzle-loading shotgun and killed a mess of squirrels before breakfast.

This "woods-lot," as we called it, was an inclosure of about twenty acres of fine forest, chiefly sugar-maples—we called them sugar-trees—which we annually tapped, and from the sap, or "sugar-

water,'' made maple-sugar and syrup. There were more than a hundred such maple-trees, from one foot to two feet in diameter, the larger ones tapped on two sides, and from a cane spout inserted in an auger-hole into each tap the sugar-water streamed for several hours each sunny day during the freezing-and-thawing season in the spring. All forenoon of these days I would be carrying sugar-water from the troughs under these spouts to the kettles under which the fires were kept burning, boiling down the sugar-water to a thin syrup about the color and consistency of strong coffee—at which stage it was carried to the house where, at night, we had the ''stirring off,'' that is, the cleansing and reduction of this thin syrup to either sugar or ''maple-syrup'' by further boiling and skimming in a large open oven. The process of cleansing was, first, to strain the syrup through several thicknesses of old linen or cotton tablecloth; second, to stir in thoroughly the well-beaten whites of several eggs, and third, to skim off all impurities as the boiling proceeded. The beaten eggs absorbed these impurities, and as the fragments of eggs became cooked, they would come to the top and float in the form of ''skimmins''; and these ''skimmins,'' often nearly white, and richly flavored with the delightful maple taste, would be given to and eaten by ''us children''—and, oh, how good they were. After the lapse of three-quarters of a century, I can taste them still. Some of the happiest recollections of my boyhood are associated with these ''sugar'' days and nights, and as I reflect upon them I can only exclaim:

''Backward! turn backward, O Time in your flight,
And make me a child again, just for tonight.''

XVIII

Recollections of the Civil War—Boyhood conception of Lincoln, and result if war came—Barbecues for enlisting volunteers—The ornamental cake—Advance of Federals up Tennessee River and burning of Clifton.

SOME boyhood reminiscences of the Civil War period of 1861–65, however trivial, may be of interest to the present generation. When that war began I was about 12 years old; but I was a reader of such newspapers as we had, which were weeklies, and from the time of and even before Lincoln's inauguration I recall that civil war was foreshadowed. I well remember the discussions I had with neighbor boys as to the probabilities of war, and its outcome, if it came. The trend of our boyish view was, that if the North invaded the South the South would win, and vice versa—if we invaded the North the North would win. Our belief was, that on our own ground one Southern soldier could whip three or four yankees—and we were really eager that the yankees should invade us.

My father, at the start, was a Union man, opposed to Secession, and voted against it at the State election on that question; but when the state went with the South, he promptly joined the Confederate army, enlisting in Company F., Captain Johnson's Company, in the Ninth Tennessee Cavalry, under Colonel Jacob B. Biffle, of Maury County, with

which he remained until the final surrender and close of the war.

But "we boys" did not share the conservative views of my father. On the contrary, we were "hossin' for a fight." We hated "Abe Lincoln" as the devil hates holy water, and believed he would declare war against the South and invade us, and we were confident of our ability to "lick him." Our conception of him was that of a boy's conception of "Old Nick"—that he had hoofs and horns and a long forked tail, a demon illy disguised in human form; and this was my conception of him until after his assassination.

But let me here digress to say that I know better now—that my view of him has wholly and entirely changed. It began to be modified on reading the eulogies of him with which the press was filled upon his assassination. My eyes were opened, and I felt that the subject was worthy of investigation; so I began, as soon as I could, to read up on him. The more I read, the more I desired to read. I purchased and read his debates with Douglas, and all the biographies of him I could get hold of; and while my friend James D. Richardson was a member of Congress he sent me a copy of the great work, of 20 volumes, "Messages and Documents" of all the presidents, and I read every word that came from Lincoln's pen, as there published. And I must confess, southern born and bred as I am, and animated as I am with southern instincts and sympathies, and devoted as I am to southern traits and traditions, that I am convinced that Lincoln was the very opposite of what I thought him to be in my boyhood—that he was a big-hearted, broad-minded man, and wise and far-seeing statesman—really a

friend of the South, notwithstanding he waged relentless war against it, and, withal, the most typical and greatest product of American free institutions, not excepting even Washington, or Jefferson, or Jackson, or Wilson. I might say much more of him, but this is enough in this place. This much I feel I must say, in justice to myself and my present views, however much my ardent southern friends may differ with me. If they had studied him with open mind, as I have, I am persuaded they would not greatly differ with me.

Now to recur to my boyhood reminiscences of the war and the war period: I recall the barbecues that were held in our county in 1861, for enlisting volunteers for the Confederate Army; the music of the bands, the long tables spread in the shade of the heavy timbers of the creek bottoms, the flaming patriotic addresses, the yellow stripes down the pants and on the shoulders of the soldiers in their gray uniforms, and the "cockades" on their Napoleonic hats, and how these crude martial insignia stirred and intoxicated "us boys," and especially the girls and young ladies. And I must relate a humorous incident that occurred at one of these barbecues on Indian Creek. The tables were ornamented with enormous "cakes," made not to eat but for show only—made of sawdust with just enough flour to hold the sawdust together, covered with a white coat of so-called "icing," surmounted by flags and dotted with bright colored figures and emblems—very showy indeed. It happened that after all the real eatables had been consumed, leaving these fine cakes intact, a belated old farmer arrived and asked one who appeared to be a sort of boss of the entertainment—a waggish fellow—for something to eat,

and was given a slice from one of these ornamental cakes. After the old gentleman had munched on it for a few minutes, this wag asked him how he liked the cake. His reply was, "Wall, I reckin it's all right, but if it warn't for the name o' the thing I'd jist as leave have a piece o' plain corn bread."

I was working in the fields with the negroes, of whom we then had several, and I distinctly recall that whenever, in 1861, a man passed along the road with a "cockade" on his hat, or yellow stripes on his clothes, every hand stopped his plow or hoe and gazed at him as long as he was in sight—so fascinated were we with any insignia of war or a soldier.

We lived at the time about five miles south of Clifton on the Tennessee River, and, as will be recalled by all then living or at all familiar with the history of the times, after the fall of forts Henry and Donelson, one branch of the Federal army advanced up the Cumberland River upon Nashville, and the other up the Tennessee, by transports, to Pittsburg Landing, the scene of the battle of Shiloh. This movement up the Tennessee River was in the early part of 1862. There was a large fleet of transports loaded with soldiers and their accouterments, accompanied or "convoyed" by a number of wooden gun-boats equipped with cannon. It was quite an imposing military array. The fleet had numerous military bands and several calliopes. We had not finished picking cotton, and I distinctly remember that, one morning in February or March, 1862, we cotton-pickers were picking cotton on the south side of a ridge, opposite from the direction of Clifton, when we heard, as we thought, a band playing and approaching us from the direction of

that place. We had heard nothing of the fall of forts Henry and Donelson or the approach of the Federal army. We dropped our baskets and ran to the top of the ridge, expecting to see the band which we had heard, but no band was in sight. We saw, however, in the distance, clouds of black smoke, and wondered what it could mean. We stood watching and waiting for perhaps an hour, but nothing more appeared, and we went back to work. Before the day was over we learned what had happened; the Federal army, moving up the river, had burned the town of Clifton, and it was the calliopes on the boats in the river that we had heard.

From that time to the close of the war, for much, though not all of the time, a Federal garrison was stationed at Clifton, which foraged and scouted in the surrounding country, including the neighborhood in which we lived—and here our troubles began. This scouting and foraging was confined to the daytime, as the country was filled with Confederate free-lances, or "gorillas" or "bushwhackers" as they were sometimes called—armed Confederates not attached to the regular army; and there were, later, federals of the same stripe, whom we called "tories," and there were frequent clashes between these irregular "soldiers of fortune," and many plunderings of private homes by them and hangings of noncombatant old men to compel them to disclose and disgorge their money.

An account of the trials and tribulations of this period—which can hardly be conceived of by those bred in these piping times of peace—must be deferred to another occasion.

XIX

Battle of Shiloh—Deserting Federal Soldiers Thought Confederates had won—Death of Gen. Albert Sidney Johnston—Grant's Surprise—Reflections on Result.

IN MY last previous reminiscence, I referred to the movement of the Federal army up the Tennessee River to Pittsburg Landing, at and near which occurred the Battle of Shiloh on the 6th and 7th of April, 1862. This battle was, upon an air line, some 23 or 24 miles from where we lived, to the south of us. On Sunday morning, April 6th, a lot of us boys, cool as it was, were "in swimming" in Hardin's Creek, when we heard what we first thought was thunder, though there were only a few fleecy clouds floating in the sky; very soon we became convinced that it was cannonading somewhere to the south of us—we could not tell where. None of us, at that time, had ever been as far south as Savannah, even, our County Seat, much less did we know of Pittsburg Landing or Shiloh Church, and we had no idea how far up the river the Federal gun-boats and transports had gone. The cannonading continued all day Sunday, and began again on Monday morning and continued through most of the forenoon. Still we knew nothing of what was going on, except that a great battle was waging somewhere. Late Monday evening, deserting Federal soldiers began to pass through our neighborhood

who gave us our first information of the battle. They were on their way to their homes in the North. They reported that a great battle had been fought at Pittsburg Landing, and that the Federals had been "whipped"; that Grant's army had been driven by the rebels into the river at Pittsburg Landing, and that they and many others had swum across the river to the east side, and were going home. They thought, and we believed, that the firing we had heard on Monday was that of the rebels finishing up the job.

But, alas, as we later learned, this was not so. As all readers of the history of that battle know, General Albert Sidney Johnston, Commander-in-Chief of the Confederate forces, was killed on Sunday evening, when victory was almost within his grasp, and was succeeded in command by General Beauregard. An hour's vigorous pressure of the advantage the Confederates then had—with the Federals retreating and demoralized—would in all probability have resulted in Grant's surrender; but night was coming on, and the Confederates were tired with the day's fighting, and so General Beauregard called them off, thinking he could easily finish the job next morning. This, as it turned out, was his fatal mistake. For during Sunday night Buell's army, from Nashville, arrived on the east bank of the river, opposite Pittsburg Landing, was quietly boated to the west side in gun-boats and transports, and added to Grant's army Monday morning, which, thus reinforced, was enabled to turn the tide and give the final victory to General Grant. If General Beauregard had known or suspected that Buell's army was so near on Sunday evening when he suspended the fighting, he would

probably not have done so, but pursued his advantage at all hazards, and the result of Shiloh would have been different. In all probability, too, the subsequent career of General Grant would have been different. It is certain that the attack of the Confederates was a complete surprise to General Grant. His "headquarters" were at Savannah, that is, he was lodging in the home of Mr. W. H. Cherry, at Savannah, some ten or twelve miles, by river, from Pittsburg Landing where the bulk of his army was, and General Buell was leisurely approaching from Nashville to join him. As Mr. and Mrs. Cherry reported, General Grant was seated at their breakfast table on Sunday morning, in the act of raising his cup of coffee to his lips when he heard the opening gun of the battle; he set his coffee down without tasting it and hurried to his small transport near by and sped to the scene. Buell was in hearing of the cannonading all day Sunday, and was whipping up and hurrying all he could to reach the scene of the battle before it was over—plowing, hub-deep in many places, along the mirey roads and through the sodden fields, for there had been heavy rains and it was the breaking up of winter; and, instead of going on to Savannah, crossing the river there and going up on the west side, which would have been the ordinary course had there been no haste, he cut diagonally across the open country, with practically no roads, to the river at Pittsburg, as I have said, where he arrived during the lull in the battle Sunday night. Buell's army passed through the farm of my grandfather and many other farms with which I was familiar, and I saw them soon afterwards. They were left in a condition well-nigh indescribable—worse torn up than

any spot in the woods I ever saw which had been cut up by log-wagons.

If Albert Sidney Johnston had lived, or if he had been succeeded in command by a general of the military ideas and conceptions of Bedford Forrest, for example, I have no doubt the final issue of "Shiloh" would have been very different.

But why express regrets now? The final result of the war would not have been changed—it might have been deferred, but not changed.

The valiant Confederate struggle was bound to fail in the end. The institution of slavery was doomed by the advance of modern civilization; and the long disputed doctrine that ours was "an indissoluble Union of indestructible States"—the supreme and noble concept of Jackson, Webster and Lincoln—needed to be established. Was there in operation then and controlling, "a divinity that shapes our ends, rough hew them how we will"? I do not know. It is not uncomfortable to believe that there was, and that there is an overruling providence that guides and determines the ultimate destiny of the nations, however it may be temporarily thwarted and retarded by the action of men.

Few if any reflecting men will now deny that it was best that the Civil War should end as it did. If it had not, who can now conjecture the consequences? They are now even more horrible to contemplate than they were to imagine in the days of Daniel Webster and Andrew Jackson. To my mind, one of the finest and most soul-stirring passages in all American political literature is the peroration of Mr. Webster in his famous answer to Hayne on this great question, during the first administration

of Andrew Jackson, in 1830, with which I may, not inappropriately, close this reminiscence. Said Mr. Webster:

> "While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that, I seek not to penetrate the veil. God grant that, in my day at least, that curtain may not rise; God grant that on my vision never may be opened what lies behind! When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union—on States dissevered, discordant, belligerent—on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their feeble and lingering glance rather behold the gorgeous ensign of the Republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, not a single star obscured; bearing for its motto no such miserable interrogatory as 'What is all this worth?' nor those other words of delusion and folly 'Liberty first and Union afterwards'—but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land and in every wind under the heavens, that other sentiment, dear to every true American heart—Liberty and Union, now and forever, one and inseparable."

Not so eloquent, but not less earnest and determined, was the declaration of our own Andrew

Jackson, near the same time, that "The Union must and shall be preserved"; and in the same vein was the modest and mournful utterance of Lincoln at Gettysburg more than thirty years later, that those there buried had died that "Government of the people, by the people, and for the people, shall not perish from the earth."

But isn't this funny? Here again I have wandered far afield from my starting point, reversing the customary antic of descending from the sublime to the ridiculous and jumping suddenly from the rural incidents of unsophisticated boyhood life to grave questions of State—excuse the feat.

XX

Depredations of Federal Soldiers—Old Balaam's "She-Folks"—Concealment of Foods under Brush-heaps—Grind-stone Incident—Murder of Citizens—Hangings for Money—Reflections on League of Nations.

I HAVE said that "our troubles began" with the advance of the Federal army up the Tennessee River and the establishment of a Federal garrison at Clifton. Up to that time, there had been no "raiding" by soldiers or armed bands in our section. True, the processes of civil government had practically ceased; the schools were suspended, and the courts closed; but the slaves were all still at home, farm work going on, cribs and smokehouses well filled, and the farms stocked with their usual supply of horses, mules, cattle, sheep and hogs—and while there was the usual quiet lull that commonly precedes the storm, things were moving, though slowly, in their customary way.

It was only a few days after the establishment of the garrison at Clifton, that the Federal soldiers began to forage and scout in our neighborhood. The homes and farms of Confederate soldiers were the first attacked—those of Union men were passed by. Our corn cribs and smokehouses were first emptied—and when I say emptied, I mean just what I say. Every ear of corn, bundle of fodder or oats or wisp of hay, and every ham, side or shoulder of

bacon, and pound of lard—all sausage, in fact, everything eatable was taken, including molasses, butter and milk; and later, the live stock—horses, mules, cattle, sheep, hogs, chickens, ducks, guineas, turkeys—everything but the houses and furniture and farming implements. At first it looked like starvation. At times we had nothing whatever on the place to eat. Our family consisted of mother and five children, myself the oldest, and ten slaves, about half of whom were children younger than I. But for our neighbors who escaped these raids, we should have starved.

A ludicrous thing happened one day in connection with these raids. It chanced that we had, the summer before, stored a pen of oats, in bundles, in a dense thicket at the back of the farm, out of sight unless one penetrated the thicket. These oats were preserved for stock feed the next summer. After the soldiers had stripped the cribs and stable-lofts of all the corn, fodder and hay they contained, one of them encountered old Balaam, an illiterate old negro, out at the yard fence and asked him, "Have you any sheaf-oats?" Balaam was very old and a little hard of hearing, and he had never heard of bundled oats being called "sheaf-oats." So, either from ignorance or by design—I would not say positively which—he professed to understand the man as referring to "she-folks," and answered, "She-folks? Yassur, dey's all dar in de big-house," pointing to the residence. The soldier repeated his question several times, apparently in much disgust, but always getting the same answer, he rode away—no wiser than he was before. And thus was our pen of oats saved, which stood us in good part afterwards.

For it happened that when the place was stripped of its live stock, one of our milk cows, giving milk, was "out on the range" and escaped the raiders. When she came home, we roped her and tied her out in the woods where we milked her—feeding her on oats—till the stress was over.

And how do you suppose we kept the milk in the daytime? It is always interesting to note what people will do when put to the necessity. Nothing is more true than the old saying that "where there's a will there's a way."

As I have heretofore said, these raids were confined to the daytime. The Federals were afraid to scout or forage by night, as the country was full of bands of Confederate "Gorillas"—desperadoes who were ready, under cover of night, to destroy them. So our nights were our own. After we had been deprived of all of our food- and feed-stuff and most of our living things—animals and fowls—we still had a few hogs running wild. These we corralled and slaughtered, though most of them were not what might be called "fat porkers," and to preserve the meat as well as our milk and butter and such other things to eat as we could beg or scrape up, we dug deep holes in the woods-lot adjoining the yard, an acre or so of which had been freshly "cleared," that is, the timber cut and the brush piled in large "heaps," familiar to every farmer; and in these holes we placed our food in rude boxes, and covered the whole with these large "brush-heaps." Thus, during the daytime, this little clearing presented the innocent appearance of a "new-ground," spotted with large brush-heaps; but under one of which, for many months, was our combined smokehouse, dairy and pantry, which we

entered each evening, after dark, by removing the brush. We did not dare disclose its location in the daytime. All our meals were eaten by candlelight, and we fasted during the day.

Later these prowling Federal soldiers began taking clothing and household articles, especially shoes, women's dresses, jeans, linseys, and uncut cloth. I remember one day, a soldier came down the stair steps with the only extra pair of shoes my mother had under his arm; I tackled him, telling him they were the only shoes my mother had, and shamed him into giving them up. Another day I was grinding an axe, one of our negro boys turning the grindstone, when, as the squad of soldiers were leaving the house, a young soldier approached me and demanded that I take off and give him a pair of comparatively new boots I had on. I refused, and he made a motion towards drawing his pistol telling me, with an oath, that I had to. The negro boy broke and ran; but with sheer desperation, I raised the axe and said to the young soldier that if he drew his pistol I'd split his head with it. He hesitated, and his companions began to laugh at him. This emboldened me, and though he stood and cursed me for some minutes, he did not then draw his pistol. His companions were mounting their horses and leaving, most of them laughing at him and apparently siding with me, and I stood my ground. Finally he left me and mounted his horse at the gate some ten steps away, and as he did so, drew his pistol and leveled it at me. I expected him to fire; he did not, but turned and galloped away, leaving me in full possession of my boots, but trembling like a leaf. I did not get "scared" till it was all over. I then realized how reckless and desperate

I had been; but I felt from the start that the young fellow, for he was scarcely grown, was chicken-hearted, and that I could bluff him; and, as I have said, the conduct of the other soldiers, laughing at him and siding with me, encouraged me.

This condition continued for many months, a year or more as I recall. Then the garrison was abandoned, and thereafter our section was within the lines of first one side and then the other—now sprinkled with Federal soldiers, now with Confederates, mostly small detachments, and sometimes with irregular bands of gorillas, bushwhackers and tories, not belonging to either regular army, but all bent on rapine and plunder, not to say murder of each other, and of old men and noncombatants—the "yankees" plundering and sometimes murdering rebel families and sympathizers, and the "rebs" treating in the same way, but less frequently, the families of Union men and sympathizers.

Towards the latter part of the war, the "tories," as we called them, were our worst enemies. These were the men of our own and adjoining counties who had "gone over to the yankees." Many of them had first joined the Confederate army, and when its cause began to wane, deserted and joined the Federals; and these were the meanest and cruelest class we had to deal with. They scrupled less at murder and all sorts of outrages, most of them being the very scum of the country, as Bolshevistic as the Russian mob. For example, one cold, rainy night, a squad of these "tories" of about a dozen, headed by an old man of our neighborhood whom I knew well, rode up to our house and compelled the women folks to prepare supper for them, then piled on the beds with their clothes and muddy

boots on, where they slept till one or two o'clock in the morning, when they mounted their horses and rode away. A few days afterwards we learned that they had taken from his home on Indian Creek an old gentleman, a rebel sympathizer but noncombatant who hadn't even a son in the Confederate army, and carried him out on the road towards Savannah and there murdered him and left his body by the roadside. He was a near neighbor of the leader of that squad, also a noncombatant but ardent Union man.

There were, in our neighborhood, many hangings of old men, suspected of having money, to compel them to disclose its hiding place and give it up. My good old friend Joseph Davis, Sr., whom I have heretofore mentioned was one of them. Such was "war," even to us civilians, and how much more horrible to the thousands of foot-sore, half-clad and half-fed soldiers in the field whose very lives were offered for sacrifice!

The Roman maxim, "In tempore belli, leges silunt"—in time of war, the laws are silent, is still and always will remain true. The open and organized slaughter of soldiers in battle is not, it has seemed to me, the worst effect of war, and especially of civil war. To the reckless, cruel, and heartless, outside the regular armies, a state of war seems to release them from all restraints, legal, moral and social, and they proceed to verify and illustrate the trite but true saying that "Man's inhumanity to man makes countless thousands mourn."

May we not hope that, as Mark Twain was wont to say of the rugged golden age of the west, "Them times will never come again"?—that the League of Nations, as envisioned and framed by the lamented

Woodrow Wilson, and whose rejection by a blindly partisan Senate must go down in history as the "Arch Crime of the Ages," will ultimately come into its own and function as he conceived it would, and the reign of peace be universal and everlasting?

Our tribulations in "reconstruction" days were little less insufferable, until put an end to by the Ku Klux Klan, which originated in a neighboring county; but of these I must speak later.

XXI

Humorous Incidents During War—Henry Newcomb, Stammerer—Thomas Newcomb's Philosophy—One Dollar a pound Cotton—Salt Forty Dollars a Bushel.

TIMES are never so perilous, even in the midst of war, as to eliminate all humor and enjoyment. Happily human nature is such that it usually makes the best of a bad situation. It was Bill Nye, I believe, who claimed that humor always arose from some untoward turn of things—some sudden and unexpected break in thought, speech or action; and that it often came from the saddest and most horrible things, for example, he said, "from pestilence, disease, death, war, mothers-in-law, and the like"—from some disturbance of order and harmony, some surprising deformity of animate or inanimate objects; and that while no one would laugh at a crippled or deformed child, yet if one saw "a double-headed rooster runnin' both ways to git away from himself," one could hardly suppress a guffaw.

Many humorous things have been told of stammering people, but one occurred under my observation during the Civil War, which I have often related, and which, if not typical, has the merit, I think, of being novel.

We had the only cotton gin in the neighborhood when the war broke out. It was a "horse gin," operated by horse-power. As I have said, all our

horses and mules were taken by the Federals early in 1862. It happened that Mr. Joseph Davis, a neighbor whom I have already mentioned more than once, had stored his entire crop of cotton of the year before, about 40,000 pounds in the seed, in our gin-house at the end of the ginning season of 1861, wisely believing the price would rise and he could sell it for more the next year. This cotton had not been disturbed by the Federals, and in the late summer or fall of 1862, Mr. Davis sold it to Mr. Henry Newcomb, and arranged with one of our neighbors, Mr. James Gore, whose live stock had not been taken, to gin and bale it for him, with my mother's consent, for one-half the toll—my mother to have the other half. The toll was one-eighth, or one-tenth, I forget which.

Mr. Newcomb was quite a cultured gentleman, a Canadian by birth, and, by the way, a brother of Professor Simon Newcomb, of the Smithsonian Institution of Washington, but the worst stammerer I ever knew. It was currently said of him that he began his career as a preacher, but was driven to quit the pulpit because the rasping noise made by his stammering was so much like that of a dog scratching fleas that his congregation was constantly looking under the benches for the dog, instead of listening to him.

Mr. Newcomb had not made any arrangement with my mother for the purchase of her interest in the toll, but wished to do so; so one day he sent for me to come to the gin-house, where the ginning was going on. Mr. Gore was "feeding" the gin, and Mr. Newcomb was "waiting on him," that is, carrying the seed cotton from the piles, in a hamper basket, and pouring it out on the breast of the gin. He

beckoned me to come to him as he was filling his basket in a remote part of the gin-house, near the wall, and when I reached his side he began by saying (or trying to say), "I'll g-g-give your mother—I'll g-g-give your mother—I'll g-g-give your mother s-s-s-s-s-s (his prominent "Adam's Apple" all the while bobbing up and down). And when out of breath with his hissing and sibilant "s"es, he began again, "I'll g-g-give your mother—I'll—g-g-g-give your mother s-s-s-s-s." This he repeated several times and until he had filled his basket, when he shouldered and carried it to the gin and emptied it. Returning, he began filling it again, and at the same time, as he worked, repeated, "I'll g-g-give your mother—I'll-g-g-give your mother s-s-s-s-s-s-s-s," continuing his futile efforts to say something beginning with an "s" until his second basket was about full, when, apparently disgusted with himself, he whipped out a short pencil from his pocket and wrote upon the wall a large figure "7," and pointing to it, said, "I'll g-g-give your mother—*that*, for the cotton," meaning, as I well understood, that he would pay seven cents a pound for my mother's interest in the toll.

That was a tremendous price for the cotton at that time, as we thought—equivalent to more than 30 cents a pound in the lint; and I, being fully authorized by my mother, at once closed the trade with him, anxious to escape further "parley," for I was nearly bursting with suppressed laughter, which I could not display in his presence, but which I turned loose good and strong as soon as I was out of his hearing.

And this brings to mind another interesting incident that occurred a year or so after the Civil War,

with Mr. Thomas Newcomb, a brother of Henry. Thomas Newcomb was a tanner, living in our neighborhood and near a school house in which I was teaching school, young as I was. He was a very intelligent and well educated man, with quite an analytical and philosophical turn of mind, and also with an impediment of speech, but not so hampering as that of his brother Henry. He was a good and interesting talker, but as he talked the muscles of his face seemed to pull his mouth, which split his face diagonally, around towards his ear at the upper end, so that, as he spoke, he seemed to be biting around at his ear. He seemed to like me, boy as I was, and it was his custom to come to the school house around noon and chat with me during play-time. One day, the subject of his discussion was the question of the "intrinsic value" of things. What gave rise to it was the fact that Mr. Gore, the same man who had ginned Henry Newcomb's cotton during the war—a quaint and eccentric old gentleman—had recently sold his cotton, some 12 or 15 bales, at much below the recently prevailing price. He had been holding his cotton for an advance for a year or two, and had seen the price come down from 40 or 50 cents a pound or more at the close of the war to about 15 cents, and, thinking it was going lower, had, upon a slight reaction, sold at 16 cents. Newcomb was much amused at a remark attributed to Mr. Gore when informed by a neighbor a few days after his sale that cotton had gone up to 20 cents. Mr. Gore had remarked, with a sniff of the nose which was habitual with him, "Egad! I'm glad I got mine off before it riz." This gave rise to Mr. Newcomb's discussion of "intrinsic values." In a very learned, at least a very sensible, dissertation, he maintained

that there was no such thing as the intrinsic value of anything—that values were always relative, dependent upon supply and demand—that anything was really worth what it would bring in the market, and no more; and he descanted upon that quality in human nature which makes a man think what he has for sale is worth more than he is offered for it. And he drove home his point by this apt illustration: "For example," said he, "if a man were to come through this country and offer every farmer t-t-twenty-five cents apiece for the ch-ch-chips on his wood-pile, it would be n-n-no time till he'd honestly think they were worth f-f-f-fifty cents apiece." This impressed me at the time as pretty good sense, and my more than 60 years of subsequent observation have tended to confirm that opinion.

Speaking of cotton reminds me of another incident that occurred during the latter part of the war, I think in 1864, which, while not humorous, is nevertheless interesting. We had by some miraculous means, the details of which I do not recall, secreted a bale of cotton, of about 450 pounds. A stranger passing through the country, and finding out in some way that we had this cotton, applied to me to buy it. He offered me one dollar a pound for it, provided I would take, in part pay, a little bay pacing mule he had at $200. I accepted his offer, and he paid me (for my mother) $250 in crisp, clean greenback bills, the first I had seen, and delivered to me the mule. This little mule, let me pause to say, was the dearest little animal I ever saw. Her limbs were as trim as those of an antelope, and she was almost as quick and nimble in her movements; she was not quite four feet in height, and as fat and sleek as a butter-ball; she was as gentle as a lamb,

and had none of the deceptive traits of an ordinary mule; her natural gait was pacing, and such a pace I never knew to be possessed by any other animal—it was like floating on the air, as steady and easy as an airplane, and she needed no whipping or spurring—in fact, I so loved her that for any one to have struck her would have been as great an offense to me as the lashing of his chariot steeds by Messala was to Ben-Hur; I rode her to school, and to see my sweetheart, and everywhere I went for several years, and we finally traded her for a gentle, iron-gray pacing pony which we sold to a very old gentleman in the neighborhood, Mr. Thomas Moore, who coveted her for her like gentleness and easy gait. The name of the little mule was "Bettie," and if there be an equine heaven or paradise where animals enjoy a future life of rest and peace in return for the pleasure they gave in this world, "Bettie" is surely there.

I will only add that with some of the $250 we got for our bale of cotton, I was enabled, soon afterwards, to accompany a neighbor, Mr. James Watson, on a trip of more than twenty miles, through the snow on horseback, to a point above Savannah, where we bought some salt, the first we had had in two or three years, and for which we paid $40 a bushel. All the dirt in our smokehouse had long since given up all the salt it contained, by being leached in ash-hoppers, and the brine evaporated or boiled down. Think of living two or three years without salt!

XXII

Reconstruction Troubles—Gray-cutting and other Outrages—The Ku Klux Klan.

I HAVE said that our tribulations during "reconstruction" times, succeeding the war, were little less insufferable than those during the war. There were not a great many slaves in our section when the war came on, and, unlike conditions in many sections of the South, our chief post-war troubles were not attributable to the presence of negroes to any appreciable degree. In fact the few negroes remaining with us after the war were not troublesome at all, but rather docile—many of them remaining and working with their old masters for some years of their freedom. Ours remained with us for some time after the war. Our troubles came rather from ex-Federal soldiers and guerillas whose homes were in our county or section. These, returning from the war in their uniforms and with their horses and side arms, brought with them much of the spirit of intolerance, boastful arrogance, and impatience with law, engendered by the war. The presence of many returned Confederate soldiers, who came also in their gray uniforms—all the clothes they had—seemed to greatly aggravate the ex-Federals, who apparently had lost none of their animosity and hatred toward everything of a gray color. Our nearest town was Clifton, where drink-

ing saloons were in full swing, and to the south of us, especially on lower Indian Creek, was a nest of these returned ex-Federals and free-lances, and we lived on the road traveled by them on their way to and from Clifton. Their outrages were usually committed in liquor, either at Clifton, or while returning from that place.

Immediately after the war, these ex-Federals attacked and brutally beat up my cousin, Dr. Henry W. Hunter, who had been a surgeon in the Confederate army, and drove him from his home at Clifton. He fled to Mississippi and never returned. A little later, finding my uncle, Thos. R. Hughes of Clifton, who had been a Confederate Colonel, with a gray coat and vest on, they stripped him of them and shot them to pieces with their pistols, cursed and abused him shamefully, and threatened to kill him if they ever caught him again with a gray thread on. Numerous similar outrages were committed in the town—I mention these as mere examples.

Similar outrages were committed or attempted in the country. I will mention only a few. One of our nearest neighbors, Mr. James Watson, was a blacksmith, and, by the way, a faithful type of "The Village Blacksmith" of the poet Longfellow—honest, hard-working, a Christian and real leader and wholesome exemplar of his neighborhood, but a rebel sympathizer who had sent two sons to the Confederate army. One day, two of these cowardly desperadoes—Wade McCasland and Dal Brooks—returning from Clifton, half drunk, stopped at Mr. Watson's shop where he was at work, his son Sam, a little younger than I, assisting him as "striker," and observing that Sam had on a gray jeans vest they demanded that he take it off; he refused, whereupon

one of them, with his pistol in one hand and his knife in the other, inserted the knife first in one armhole and then in the other, cut the vest off of him and cast it contemptuously upon the ground where both of them emptied their pistols into it. Of course Mr. Watson and his son had to submit.

I naturally learned of this incident soon after it occurred, and, as I was wearing a long gray jeans frock coat which had been made at home, I expected to be similarly attacked by these "bullies" in due time, and I made up my mind deliberately that they should have trouble—as my gray coat was the only one I had and I knew not where I could get another. I knew McCasland and Brooks, had known them before the war—in fact had been a schoolmate of Brooks—and believed that I could bluff them.

I was running the gin then, doing the "feeding" myself—my position being next to the rear wall, and separated from the only door in the building by the belt, running some two feet above the floor, which was perilous to cross when in motion. It was winter time, and I was wearing my long gray coat. So, one morning about two weeks after the Watson incident, I saw these fellows, McCasland and Brooks, pass on their way to town. I was standing on the platform in front of the gin unloading cotton as they passed, and I saw them eyeing, with a sinister look, my gray coat, but they said nothing. I felt sure that when they returned, excited and stimulated with whiskey, there would be trouble; so I got an axe and stood it up against the wall beside me, where it could be plainly seen, and where I could put my hands on it in a second—and I resolutely and deliberately made up my mind that I would use that axe before I would give up my coat.

Late in the afternoon, while I was still running the gin, I heard these fellows coming back, yelling like Comanche Indians. They galloped up to the gin-house fence, McCasland dismounted and, throwing the reins of his horse to Brooks, mounted the steps to the door of the gin and swaggered up to a point opposite me, just across the belt, and stopped. A large pistol was at his belt. He did not speak, nor did I. I saw his eye glance at the axe plainly in my reach, but not in his. To me, he seemed to marvel why that axe was there—there was obviously no need for an axe about a cotton gin. After standing there for perhaps five minutes without making a move or uttering a word, he turned and walked out, got on his horse and galloped away. And thus passed by this near tragedy. I don't know what it was that deterred him, but he must have seen something in my eye that said "you dare not." It was there, whether he saw it or not; for as sure as fate if he had attacked me, or attempted to draw his pistol, I would have split him open with that axe.

Some weeks or months later another "near tragedy" occurred in our neighborhood in which these same two "bullies" figured, but with a more serious ending, if with no less ludicrous aspect. Mr. John F. Journey, whose farm adjoined ours, had been a gallant and brave Confederate soldier, a member of my father's company. He was a fine fellow, courageous as a lion, but a man of few words, soft-spoken, quiet, and inoffensive as a child. He had come out of the war with no clothing but his gray uniform, including his gray round-a-bout, which he was wearing at his work. He was clearing a little piece of ground beyond the end of a lane which led from his house towards Clifton, a part of the road

usually traveled by McCasland and Brooks in going to and returning from that place. It was crisp, cold and rather snowy weather, and Mr. Journey was driving his wagon and team to his work and bringing a load of wood as he returned at noon and night. One morning, or noon, I forget which, thinking he might be able to shoot some birds, he had carried along his single-barreled, muzzle-loading shot-gun, loaded with bird-shot. As he returned with his load of wood, and his little gun, lying back between the sticks, still loaded, he was overtaken, in the lane, by these men, McCasland and Brooks, on their way home from Clifton, in liquor, as usual. Riding up beside him, they demanded that he "take off that damned rebel round-a-bout." He objected, telling them, in his soft, quiet way, that it was the only coat he had. They cursed him, and one of them, drawing his pistol, said to him if he didn't take off that coat he would shoot it off—all meanwhile moving slowly along the road. They had not observed Mr. Journey's gun. Mr. Journey softly and quietly replied "shoot away"—and he did. The bullet entered the fleshy part of Mr. Journey's left forearm near the elbow and came out near the wrist, making a painful but not a serious wound. Mr. Journey, without uttering another word or stopping his team, reached back for his gun with his right hand and as he brought it around emptied it in the face and breast of the man that had shot him—Dal Brooks. The two cowards wheeled on their horses and ran back the other way, yelling like the very devil was after them, and going around several miles out of their way in order to avoid going by Mr. Journey's place.

The sequel was no less interesting than this ludi-

crous tragedy itself. At the next term of the Circuit Court of the county, these contemptible outlaws procured an indictment against Mr Journey for a felonious assault upon them. Mr. Journey was arrested, but made bond, and employed Judge Elijah Walker to defend him and handle his case. At that time, ex-rebel soldiers were not allowed to testify in court, much less to sit on juries. Fielding Hurst, an ex-Federal Colonel, who had never been a lawyer, was then Circuit Judge, an appointee of Brownlow. Judge Walker had been a consistent Union man and, before the war, Circuit Judge for many years. He was Hurst's friend, and really his dependence for all the law he knew. Judge Hurst could not have conducted his office, with any sort of decency, without Judge Walker's counsel and advice; he was, withal, a man of good sense, and in many respects a fine citizen—my regular client and stanch friend from 1871 or '72 until his death, some years later. So, Judge Walker managed to have the case continued, on one pretext and another, until the change of administration came in 1870, when the case was dismissed, without trial. When this change came, and probably before (for in the meantime the Ku Klux Klan had gotten in the saddle) McCasland and Brooks disappeared, as did many others of their stripe.

These lawless desperadoes did not confine their outrages to their quondam enemies—the ex-rebels—but did not hesitate to visit them upon Union men who got in their way. For example, Esquire Isaac C. McCasland, a harmless, peaceful and inoffensive Union man and good citizen—a special friend of my father both before and after the war, and his son Andy, still living, my lifelong friend—was called to

his door and shot dead by Ike Brooks, a brother of Dal, for no known reason. Brooks at once fled the country and never returned. It was surmised that Esquire McCasland had knowledge of some meanness or crime of Brooks, which the latter determined to suppress. Let me say, in this connection, all the Brooks family were not of this lawless stripe. Polk Brooks, a brother, lived in the county many years as a respected minister of the gospel; and Phez, another brother, was living on Indian Creek as a law-abiding and prosperous farmer when I left the county 45 years ago, and may be living still.

George W. Hardin, a young ex-Confederate soldier of Indian Creek, was shot from his horse and killed near his home as he returned from church one Sunday. One William Goldsmith, living lower down on the Creek, was suspected of this murder, and some years later was indicted at the instance of Hardin's brother, Henry H. Hardin, a good lawyer and at that time a Baptist preacher, who employed me soon after my admission to the bar, to assist in his prosecution. We failed to identify him as the murderer by sufficient evidence, and he was acquitted.

Numerous similar outrages were committed during this "reign of terror" in Hardin and adjoining counties. I have given these as only a few samples.

Finally, in Giles County, the Ku Klux Klan was organized. This organization soon spread to our section. It was composed largely of our best citizens. They clothed themselves and their horses in flowing white robes, crowned themselves with tall and imposing turbans, spoke in sepulchral voices, claimed to be the spirits of dead soldiers, famished with thirst, and each, when opportunity offered to

impress the superstitious, drank (or rather made believe he drank) whole buckets of water at a time, declaring it was the first water he had had since he was killed at the battle of Shiloh (or some other great battle). They committed no outrages, except an occasional slight whipping of an obstreperous negro or a lawless ex-Federal, accompanied with a solemn admonition to "behave himself"; they paraded the country and surrounding towns, especially where outrages had been committed, on horseback and usually in companies of forty or fifty, always in dead silence.

There was a company of Brownlow militia stationed at Waynesboro, not only themselves hectoring the surrounding country, but enboldening the lawless "radicals," as the ex-Federals and their coadjutors were then called. A large company of Ku Klux—of more than 100—one day paraded through this town in full regalia, in broad daylight. The militia, sheltered in the court house, opened fire on them, which they returned, and several horses and two or three men were shot, but none seriously. A near neighbor of ours was one of them. They rode round the square, slowly marching through the town and quietly leaving as they entered. The garrison of militia was withdrawn from Waynesboro within a few days, and never returned.

Whatever may be thought by others of the Ku Klux Klan of the 60's, I can personally testify that its influence was entirely wholesome in our section. It put a sudden end to all such outrages as I have been describing, and gave us the first real peace we had had since the invasion of Grant's army early in 1862.

Editorial note on "Diary Entry" On Christmas Day —The Radio, and S. Parkes Cadman.

AN AFTER CHRISTMAS THOUGHT

Editor's Note—It is a matter of regret that the following letter and word picture could not have been published in our pre-Christmas issue.

In as much as Judge Pitts wrote it on Christmas day, it will have to come afterward. But like the subject with which he deals, it is for no particular day: any day, every day the great vital points of life are before us, and when a man can look down the broad expanse of 80 years of active life and wide experiences and speak with feeling and conviction of the beneficence of those things of the spirit, out of which Christmas has its origin, then we of a younger generation, might well pause and consider carefully if we have ourselves distinguished between the dross and the gold.

The Citizen Appeal:

Before I began writing reminiscences for your paper, I had been, at leisure moments jotting down thoughts and reflections occasionally in a little book kept at home. These had been discontinued, until resumed today.

I inclose a copy of the entry of today, which you may or may not find of sufficient interest to publish; I wish, especially, that Dr. Cadman's lectures over the radio might be more generally known and heard, as they constitute, in my opinion, the most potent

single influence for good now being exerted in this country.

Very truly yours,
JNO. A. PITTS.

December 25, 1929.

This is Christmas Day! And it has been many months since I put pen to these scribblings. My first thought is, to give thanks for the many blessings we continue to enjoy—good health of self and household and all the comforts of an humble home in a land blessed with freedom and plenty; and my second is, of the infinite and inscrutable wisdom, and power, and love of the Author of this day and the Creator of all things.

The radio! What a marvelous instrument for the propagation of truth, of knowledge, of the entrancing beauties of that "concord of sweet sounds" that moves the heart, and of that eloquence of speech which fires the soul.

As I write, my mind recurs to last Sunday afternoon, to the glorious address over the radio of Dr. S. Parkes Cadman, on the Message of Christmas, and to the noble choruses from "The Messiah" rendered on that occasion, and broadcast to the millions throughout this Christian land, heralding the coming of this Day. Especially is there thrust into my thought the inspired and noble words read by Dr. Cadman from the poetical prophecy of the exiled prophet, Isaiah, which I quote in part here, from the unaltered King James translation (where it is written in verse):

"For unto us a child is born, unto us a son is
given;

And the government shall be upon his shoulders,
And his name shall be called Wonderful, Counselor, The Mighty God,
The everlasting Father, The Prince of Peace.
Of the increase of his government, and peace, there shall be no end."

And just to think, that this fine address of Dr. Cadman, and its beautiful accompaniments, could be sounded over all this broad land, from lakes to gulf and from ocean to ocean, as a gladsome herald of the coming of this Day, and listened to with rapture by millions of men, women and children as they sat comfortably by their firesides! Who can measure the effect of such a performance? Nay, the effect of more or less similar performances Sunday after Sunday and day after day throughout the year, and the years to come?

And who can doubt, in the face of such a "miracle," the existence of an All-Wise and Omnipotent Overruling Mind compassing, originating and making possible such a thing?

I pause here to say, that those who are missing these Sunday afternoon addresses of Dr. Cadman are neglecting one of the most worth-while entertainments of the times. I know of nothing more delightful, more instructive, more uplifting, more wholesome for men, women and children, among all the amusements and recreations of this wonderful age, than these lectures of Dr. Cadman. He is, in my humble opinion, the greatest preacher since Christ—outrivaling even St. Peter in calling the whole world to reformation and repentance. Even the Day of Pentecost afforded to Saint Peter no

such audience as Dr. Cadman has every Sunday. He, of all living human beings, is the best answer to the pessimist, the skeptic, the agnostic, the infidel, the atheist, the so-called modernist and carping scientist. His practical religion, his able vindication of the wisdom of the pure life, his fidelity to the Divine leadership of the Christ, his respectful but irresistible answer to the doubts of the sincere critics of the Divine order—these crown him as our greatest present day moral and religious teacher, as well as most eloquent and entertaining speaker. All power to his voice and brain and hand!

Jno. A. Pitts.

XXIII

1865–70—Peaceful Scenes—Courting Days—First Fine Suit—Yarns of Hubbard and Hay, Champion Liars—Old Singing School.

IT IS pleasant to pass from the scenes of war and its aftermath to those of peace and order. All was not outrage and "gray-cutting" from 1865 to 1870. Very much of the time we were free from these evils and annoyances. The courts were restored, the schools reopened, the preachers resumed their regular services, basket-dinner meetings were held somewhere in our reach nearly every Sunday, and neighborhood "parties," with music and dancing, were frequent and well attended. Farming operations were active, though much crippled at first by scarcity of live stock and farming implements, but these were very soon provided, fences were rebuilt, thickets cleared up, ditches reopened, and the country seemed to take on new life. Everything one had to sell brought a good price, and money was very soon comparatively plentiful.

We had had little or no coffee, sugar, spices or salt for nearly four years; our clothing had been home-made, even to our shoes and hats—I myself made both shoes and hats during the war; and we had had no lights but pine-knots, grease lamps and tallow candles. I had myself arranged the wicks, melted the tallow, and moulded many hundreds of

tallow candles. We had never seen a coal-oil lamp, even, until after the war.

By 1865 or 1866 (and even before that), I had begun to "go sparking," and of course I craved more "dressy" clothes. There was a country tailor living in our neighborhood—Ephraim Burrus—and he suggested that I might obtain some fine cloth for a suit by selling some fine peaches, of which we had an abundance. I took a sample of these peaches to Clifton and exhibited them to Messrs. Hall & Halsey, Northern merchants who had established a business there, and at once effected a trade by which I was to deliver these peaches to them, crated in peck units, at $2 per bushel, until I paid for two yards (double width) of fine old English broadcloth for coat and vest, and one and a half yards of "doe-skin" for pants, at $16 a yard. Wasn't that going some for a country youngster?

Mr. Burrus made the suit—the coat a double-breasted long frock—that fitted me like I had been melted and poured into it, and charged me only ten dollars. The coat lasted many years, and until it was so tight that it almost burst at the seams and so slick that you could almost see yourself in it as in a mirror. The pants did not last so long; and when holes appeared in them I bought a new pair, of beautiful snuff-colored cloth, equally smooth and of same color on both sides, and when the outside had become sun-burnt and faded, I ripped open the seams and restitched them on my mother's sewing machine, turning the inside out, and thus making what passed for a brand-new pair of pants, bright and clean, after I had pressed them out nicely. It was the style then to wear fancy colored vests, usually of silk velvet with shiny buttons. I had one

of these vests which I much prized. With my long real broadcloth coat, snuff-colored pants equally as fine, red silk-velvet vest with glittering pearl buttons, and natty derby hat, I felt that I had reached the *ne plus ultra* of fine dress; no one in the whole section out-shone me.

From 1865 until I went to the law school in 1870, I was either going to school or teaching school, part of the time boarding and part of the time riding from home. Occasionally I taught a country school during the summer vacation of Clifton Masonic Academy, which I was attending; and upon completing the course in that institution late in 1868, I was made its principal and taught two sessions—the former principal, Prof. W. B. Smith, having resigned and moved away.

When boarding away from home, whether teaching or attending school, I usually spent the weekends at home, assisting my father in running and keeping in order his farming operations, cotton-gin and wheat-thresher—for he was not much of a mechanic, and whenever anything went wrong, he called upon or sent for me.

His farming operations were conducted mostly through tenants, working "on shares." And this reminds me of a most ludicrous occurrence one night, between a tenant and a temporary hired man, which is worth relating even at the expense of some space.

The tenant was one Creed Hubbard, a very talkative fellow and a great liar, in a harmless way, that is, he was an adept at spinning yarns. The hired man was one Newton Calvin Hay, and, by the way, his principal occupation—I might say his regular profession—was mowing hay. He carried around with him a mowing blade, and sought odd

jobs at mowing hay—he was employed by my father at the time for that purpose. Hay was also an inveterate talker and yarn-spinner, but a great stammerer, much like Henry Newcomb whom I have previously mentioned. He could read aloud, or sing, without stammering, but when he came to talk—there was the rub. He was the only stammerer I ever knew who was not sensitive about his impediment, and who really enjoyed people laughing at him; in fact he would often laugh at himself, was genuinely amused at his own breaks. He used to tell of himself that he was one day mowing hay on a roadside three miles from Mt. Pleasant, in Maury County, when a traveler came along and asked him how far it was to Mt. Pleasant. "I told him," said Mr. Hay, "it's just th-th-th-th-th-th—Aw, damn it! go on, you'll be thar before I can tell ye."

One moon-light summer night these men, Hubbard and Hay, with a lot of others including myself, were sitting out under the trees in my father's yard, when they began matching yarns, each striving to out-do the other. One yarn would suggest another, each succeeding one a little more extravagant than its predecessor, and it seemed as if, like Tennyson's Brook, they would "go on forever." Many yarns were thus told, surpassing anything to be found in Rabelais or Munchausen, Hay's stammering much prolonging and adding zest to his.

Finally Hubbard told a tremendous lie about a big hollow tree he had seen over in Arkansas, in the Mississippi River bottom. I will not attempt to repeat it with all its extravagant elaboration and ornamentation. It was to the effect that the tree had been cut off some hundred feet or more above the ground and the stump made into a hotel with

an elevator and so many floors, halls, dancing and dining rooms and sleeping rooms, and so forth and so on—a bigger hotel than any of us had ever heard of or imagined.

Hay listened patiently, and when Hubbard concluded, remarked "Well, ain't that w-w-w-wonderful! and I've no d-d-d-doubt its every w-w-w-word true. And that r-r-r-reminds me"—and then he proceeded to tell his final story, which broke up the meeting.

Hay had been overseer for a large cotton planter in Mississippi, also on the Mississippi River, by the name of Beard, and many of his heroic exploits were allocated to that period. I never can forget, though it is impossible to describe, how he uttered the words Beard and Mississippi. I can only imperfectly reproduce, in outline, Mr. Hay's story, which he took fully a half hour in telling. Said Mr. Hay:

"When I wus overs-s-s-seein' fer Jack Be-ya-Be-ya-Be-ya-Be-ya-ya-yeard befo' the wah d-d-down in Mis-sis-sis-sis-sis-s-s-s-s-sippi, I tuck ma g-g-g-gun one day and w-w-w-went out in the b-b-bottom to see if I could f-f-f-find anything to sh-sh-sh-sh-sh-shoot. And as I w-w-walked along in the t-t-tall t-t-timber, all at wunst I h-h-h-heard sumthin' dr-dr-dr-drap with a dull th-th-thud, like as if ye'd k-k-k-k-kicked a dead st-st-st-stump. I looked all around but I c-c-c-couldn't s-s-s-see nuthin'. I kep a hearin that d-d-dull th-th-th-thumpin, away off like, and f-f-f-finally it s-s-s-seemed to be s-s-s-somewhar ahead o' me, and I p-p-p-peartened up a bit; and bimeby I c-c-c-come onto the thing that m-m-m-made it all as pl-pl-pl-plain as day, and wh-wh-whut do you 'spose it wus?

"Well, sir, s-s-s-st-st-standin right thar before me wus the d-d-d-damdest b-b-biggest s-s-s-s-sycamore tree ye ever s-s-s-seed, more'n a hundred and f-f-f-fifty f-f-f-foot to the f-f-f-fust lim, and holler from b-b-bottom to t-t-top. And sir, I pl-pl-pledge ye my life that holler tr-tr-tree wus ch-ch-ch-ch-chuck full o' coo-coo-coo-coo-coons and one over, and every time one uv 'em would sq-sq-sq-squeeze in at the b-b-bottom he'd cr-cr-crowd one out at the t-t-top, and it wus them dam coo-coo-coons a fallin' that I'd been a hearin for m-m-more'n a half a mile."

At this climax everybody sprang up with wild shouts and guffaws, overturning the chairs and benches, and scattering off to bed with continued shouts of laughter. The thing was much funnier than it can possibly appear here in cold print. I remember that I dreamed that night of seeing coons as big as elephants falling from the tops of tall trees, and no doubt would have heard the dull thuds of their fall, too, but for the fact that we do not hear things in our dreams.

Another of our diversions between 1865 and 1870 was the old-fashioned country singing-school, at which we learned the notes from their shapes—square, round, diamond and triangular, representing the names do, re, me, fa, sol, la, se. Much learned instruction was given us about tones, and half-tones, the diatonic scale, and so forth and so on; but about all that remains with me of these lessons are the phrases whose initials indicated the order of the sharps and flats. These I memorized, and never shall forget. Perhaps it may be news to modern students of music to repeat these phrases, which are just as pertinent and applicable now as

they were then. The phrase indicating the order of the sharps was, "For Children's Good Destroy All Evil Books," and that indicating the order of the flats, "Be Ever Anxiously Desiring God's Constant Favor."

But most of the time was given to practising—voice training, the teacher called it. It was only during the last few days of the "term," which as I recall was ten days, that we were allowed to sing. But the young people had "oodles of fun" at these "Singin' Schools" where we spent the day, bringing our dinners, and were free and easy.

One of our music teachers was a Professor Houghton, a venerable old gentleman of university precision and regal dignity. He dressed in immaculate black, wore a long frock coat and tall silk hat, and carried a gold-headed cane. His voice was coarse and raucous, but true to scale, and his broad face was clean shaven and much resembled, with its thin and compressed lips, that of a bull-frog. He taught in our neighborhood, boarding at our house, and I learned to be very fond of him. He was a very fine old man.

I shall now, with some regrets, leave the scenes of my boyhood, and enter again into those of professional life.

XXIV

Beginnings at Savannah—Teacher in Female College—Whooping-Cough—Judge Walker, his Oddities—Porterfield Incident—Story of Shirts—Of Saddle-horse—All-Fool's Day at Linden.

I MUST again remind the reader that it is not my purpose in writing these reminiscences to present a biography of either myself or of any other persons referred to, but my only purpose is to present my own recollections of such persons, events and things as I think may be of possible interest, chiefly to personal friends and acquaintances and to those who may themselves have some knowledge and recollection of the persons and events referred to—at the same time realizing that they will be of little or no interest to strangers. And owing to my personal connection and contact with these things I necessarily have so much to say of myself and have to use the personal pronoun of the first person so often that I may appear to the super-critical to be unduly egotistical, but I assure the reader that I do not mean to be so; and while many of the incidents referred to may appear to the general reader to be too trivial to justify recounting in print, I am persuaded that none will be so trivial as not to be of some interest to personal friends and to those having some local knowledge or recollection of them—whose entertainment is my chief object.

I was admitted to the bar early in the year 1871,

and "hung out my shingle" at Savannah, Tennessee, the county seat of my home county. I was then in my 22nd year, with no money or property of any kind, and still indebted for a considerable portion of the funds expended in my education. The only law books I had were those comprising the curriculum of the courses I had taken at the law school. I had no office furniture, nor any means with which to buy furniture or pay office rent or for board and lodging. My cousin, James G. Witherspoon, who lived about a mile from town, kindly offered me board and lodging in consideration of my "legal advice" in his business as a farmer, which of course was nothing. The county register had as his office a room in the southwest corner of the Court House, which he occupied only occasionally—only a few hours each week—and there were not more than twenty or twenty-five registers' books then on hand, all ranged on the top of a tall desk along one of the walls of the room; and the use of this room as my office was kindly offered me by the register, free of charge. My midday meal had to be taken in town, and my good old Campbellite friend, Reuben East, the hotel keeper, graciously offered to credit me for my dinners. There were two or three old chairs in the register's office, and all I needed was an office table. I had from my early life on the farm been "handy with tools"; so I ripped up some white pine goods-boxes which a merchant gave me, and with these materials, a few nails, and a borrowed saw, plane and hammer, I constructed a very decent office table, which I covered over with gray "Kentucky Jeans," stretched tightly, and tacked under at the outer edges of the table. Judge Bateman, then in active practice as a lawyer but most of the

time out "on the circuit," had an office and good law library at a corner of the public square but a few steps from the Court House; the free use of this library Judge Bateman tendered me, leaving me the key when he was absent.

Now wasn't I fortunate? No millionaire's son could have had a better start. All the people—everybody—were so kind and helpful! They seemed, everyone, to be moved by that genuinely kind and good Samaritan spirit so aptly expressed in Holy Writ, "Silver and Gold have I none, but such as I have give I unto thee." Is it any wonder that I still love the old town of Savannah?

I did not attend the courts of other counties at first, and for some time, not being able to bear the expense. My time was spent chiefly in reviewing Blackstone, Kent and Story and in trying to master Chitty's Common Law Pleading—a labor which I have since found of inestimable value to me.

Soon after my location at Savannah there occurred a vacancy in the principalship of the Savannah Female College; the place was offered me, and I accepted, teaching for one or two sessions, and thus making practically my first money. A unique thing occurred in this connection. I had had, when a boy, a well developed case of whooping-cough, which I well remembered and still remember. Nevertheless, while thus teaching, I contracted that disease, in some unaccountable way, which I communicated, first, to little Jimmie Witherspoon, the almost "midget" infant child of my cousin with whom I was boarding, and then to the whole school. So, whatever the doctors may say, I can vouch for the fact that I have had a typical and well developed case of whooping-cough twice. And this is the more re-

markable since my father, as I was informed by him, was immune from all contagious diseases—never having had any of them, although he said he had slept with cases of measles and smallpox in the army.

When I went to Savannah, the venerable and venerated Elijah Walker, whose home was there, was circuit judge, and Ex. Col. George H. Nixon, of Lawrence County, was chancellor of the division, both having been elected under the new constitution of 1870. Fortunately I was soon able to make friends of both of them, and that friendship lasted throughout their lives, with increasing ardor. To recount the courtesies and kindnesses I received at their hands would fill a volume.

Judge Walker died on the last day of December, 1873, as I recall the date, and this is perhaps as good a place as I shall find to record my recollections of him.

I have said in a former article that Judge Walker was a "quaint character," but as different from Judges Guild and Leech as day is from night, and this is true. In personal appearance, Judge Walker was tall—six feet or more—rather slender, slightly stoop-shouldered, of dark, rather sallow, complexion, with keen, coal-black eyes which seemed when directed at you to penetrate you to your very soul, clean shaven, of high forehead and classic face, and with coarse, bushy, iron-gray hair, which he allowed to straggle as it would. His hands were as delicately formed as a lady's, fingers narrow, pointed and very flexible. He was an inveterate tobacco chewer, and his habit, especially in periods of mental abstraction, was to lean forward slightly when walking or riding horseback, and squirt his

ambier first on one side and then on the other, apparently oblivious to all surroundings. He loved cards, but his favorite pastime was "solitaire." I have known him to sit all day long in the tailor shop of old Jim Winborn, amusing himself with that one-man game. He was not a religious man; he sometimes used an oath, but was not what might be called a profane man—his oaths were used sparingly, and only, it seemed to me, when something of the sort was needed for emphasis. He was pre-eminently a man of moods. At times he was exceedingly communicative, sociable and even jovial; he had a fine sense of humor, enjoyed stories and jokes, but rarely himself indulged in them. At other times he was wholly self-absorbed, and woe to him who sought to trifle with him or even draw him out of himself when in one of these moods of abstraction. To a stranger, when in these moods of abstraction, he appeared boorish, discourteous, insulting—but nothing was ever farther from his mind. I well remember my first experience with him in this mood. His home was on the bluff of the river, some half mile or more from the heart of the town. It was his custom when at home to walk up town after a late breakfast, to Winborn's tailor shop where he would spend the day. One morning, soon after I became acquainted with him, I met him on the sidewalk and observed that, when yet some fifteen or twenty steps away, he was gazing straight at me; as we met, I greeted him respectfully but cordially—"Good morning, Judge"; he did not speak, but continued his gaze straight ahead, meantime munching his tobacco. I thought it strange at the time, but soon learned that it was "his way," and that he meant no harm or disrespect.

Another young lawyer, about the same time, had occasion to learn the same lesson in even a more impressive way. James M. Porterfield, a young attorney just admitted to the bar, was returning from court at Waynesboro one day in company with a number of lawyers, including the judge, on horseback. Finally Porterfield found himself riding side by side with Judge Walker. They had ridden several miles without a word being spoken—Judge Walker leaning forward, holding to the horn of his saddle, spitting to first one side and then the other of his horse's mane, and gazing vacantly into space before him. Porterfield, moved by a sense of courtesy, felt that he should start a conversation with the judge. So, as they slowly ascended a long hill at the top of which stood the fine country home of Col. Jim Smith, Porterfield asked, "Judge, can you tell me who lives there?" The judge, aroused from his revery, straightened up, looked around and replied, "Well, I've been riding this road for twenty years and I've never yet asked any one that damn-fool question." Needless to say, there was no further conversation between the gentlemen on the trip. Very frequently, though not always, Judge Walker would ride all the way between the different county seats of his circuit, without uttering a word to his companions. At other times he would be a veritable chatter-box all the way. It all depended upon the humor he was in.

Judge Walker, like many noted specialists, seemed to have no practical knowledge of things outside of his profession. Many ludicrous stories were told of him, some of which I have heard, in recent years, attributed to others. For example, this one:

Among the many eccentricities of Judge Walker was that of carelessness of his person. When on the circuit he rarely washed his face or hands or combed his hair. I have myself many times occupied the same room with him at a hotel and seen him get up in the morning, hastily dress, and go to the breakfast table without ever touching water, comb or brush; and yet, but for his bushy head, he never looked untidy.

On one occasion—and this is the story I have referred to—his wife, Mrs. Mary Walker—one of the finest of women, who looked after the judge when at home as a mother does her child—having observed that the clean shirts she had placed in the judge's saddle-bags when he left for court a week before were still there when he returned, unworn and unsoiled, said to him one day as he was leaving, "Now, judge, I've put six clean shirts in your saddle-bags, one for each day during the week. Don't forget to put one on every morning." "All right, Mary," replied the judge. On examining the saddle-bags upon the judge's return at the end of the week, and finding them empty, Mrs. Walker, in great surprise, asked him, "Why, judge, where are all the shirts I put in your saddle-bags?—did you leave them somewhere?" "O, no," replied the judge, "I still have them on." And when she upbraided him for not taking the soiled one off each morning when he put on the clean one, his explanation was, "Well, you told me to put one on each morning, but said nothing about taking any off."

As I have said, I have in late years heard this story attributed to others, but I believe it belongs to Judge Walker, for I heard it of him nearly sixty

years ago, and it fits in exactly with his character as I knew it to be.

Another characteristic story was current of Judge Walker when I went to Savannah, to this effect:

The judge owned a saddle-horse on which he rode the circuit. It was his custom, between terms, or courts, to turn his horse out to graze on the commons till needed, and then hunt him up. Naturally the horse would get "mixed up" with other horses on the "range." Judge Walker did not know his horse (though he had ridden him for years), except by the track he made with a shoe he had closely observed when the blacksmith put it on; and one day he made the mistake of corralling another man's horse which made a similar track, and came near having a lawsuit about it.

I have said the judge had a keen sense of humor. Moreover, he was a good sportsman—did not resent a practical joke upon himself. Well knowing this quality "the boys" determined to play a practical joke on him one "All-Fool's" day during Circuit Court at Linden, in Perry County. So they tied a young bull calf in the judge's stand in the early morning while the judge was still in bed, and posted a man at its tail to squeeze it at the proper time and make the calf bawl—at the same time seeing to it that the Courtroom was well filled when the judge should enter to open court. In due time the judge came from the hotel, walking slowly and looking down, as was his custom. Slowly he came up the steps, and worked his way through the crowd and, never looking up, was in the act of stepping up into the judge's stand, when the fellow at the calf's tail gave it a sharp twist, and the calf went "Bah-ah-ah." The judge paused, looked around and, taking

in the situation, said to the calf, in apparent seriousness, "Well sir, where in the hell did you get your commission?"

The crowd broke loose in hilarious laughter, in which the judge good naturedly joined. The calf was removed, and in a few minutes good order was restored, and the business of the court proceeded as usual.

Judge Walker, notwithstanding his oddities and eccentricities, was loved and respected by all—lawyers and laymen—and could maintain order and decorum in his court with less effort than any judge I have known, with one exception—Judge Wm. H. Taft. His simple presence on the bench was enough to inspire universal respect and courtesy—no one could have the heart to be rude in his presence.

Of his ability as a lawyer and judge, I must speak later.

XXV

Judge Walker, His Legal Qualities—Literary Attainments—Handwriting—Terseness and Clarity of his Language—Judge Bateman, His appearance and characteristics—Stories of His Quaint Humor—Refreshments for Fishing Trip—Provocation for Assault—Calf Case—Defiance of Supreme Court—Preacher's Arson Case—A Great Judge.

WHILE I did not myself try many cases before Judge Walker, I observed his conduct of many trials. I "rode the circuit" with him for about two years, and when at court in other counties than my own, having nothing else to do, I remained in the courtroom all day, watching the proceedings; and in this way had, I think, a fair opportunity to form a just estimate of him.

And I unhesitatingly express the opinion that he was the most thorough and profound "common-law" lawyer and the best "circuit court judge" I have ever known.

He idolized the "common-law"—its fundamental principles, its logical processes and analogies, its orderly and sensible procedure; and he had what may be truly termed a contempt of "equity"—for any loose and disjointed system, as he termed it, that would tolerate departures from the exact and logical rules of the common-law. His idea was, that the common-law was a set of principles, dominated by reason and common sense, and a spirit that was

sufficiently flexible and progressive to meet the ends of justice in all exigencies.

I am not to be understood as indorsing to its full extent this idea of Judge Walker, though I freely grant that his knowledge of the basis of it was far greater than my own, and I am not prepared to deny that he was right. I certainly share his veneration for the glorious old system of the common-law, which, as I have had occasion to observe before, was declared by Lord Coke to be the "essence of human reason"; but I hesitate to condemn, as he did, the system of Equity Jurisprudence, which is generally conceived to have been designed to relieve against the hardships resulting, in exceptional cases, from the fixed and rigid rules of the common-law. And certain it is, I think, that our general system of both law and equity, and its application and administration, have suffered and been much deteriorated by both statutory innovations and a resort to so-called modern precedents—incongruous and conflicting—instead of a more steadfast reliance upon the settled principles and analogies of the older systems and their more logical procedure.

Judge Walker was a man of education and literary culture, though I do not know in what institutions he had his training. He was both a Greek and Latin scholar, a consummate mathematician, familiar with the classics, and, like Goldsmith's Hermit, "skilled in legendary lore"; and he had, what I consider the greatest test of all, the faculty and facility of terse, clear and lucid expression to a degree that I have never known in any other lawyer or judge.

His handwriting, at the age when I knew him—around seventy—was also remarkable; a little trem-

ulous, but so uniform, level, and in such straight lines acros the unruled page as to resemble copy-plate, with never a blot or erasure. He was engaged in the practice of law from 1865 to 1870, and circuit judge for many years prior to the Civil War, and he left in the files of the courts many specimens of his writing, of pleadings, orders and decrees, and charges to juries in felony cases; and many of these I ran on in the course of my practice in these courts after his death. In those days there were no stenographers or typewriters; everything was written in long hand. The paper then used was unruled "fools-cap," folded at the side, and generally tinted pale blue or green. And so terse and compact was the writing of Judge Walker, that I never found a bill or answer, a declaration, demurrer or plea, or even a charge to the jury in the most complicated criminal case, that covered more than a single sheet of this paper, of four sides or pages. His charges to juries, whether oral or written, though to the modern lawyer inconceivably brief, were so plain and clear that the juries never came back for "further instructions," and there were few mistrials; and, so far as I know, no case tried before him was ever reversed for error in the charge.

I have said that my first year at the bar was devoted largely to the study of Chitty's Common Law Pleading. I very soon had opportunity to avail myself of the knowledge thus acquired in a case tried before Judge Walker in McNairy County. My client was sued on a note which appeared upon its face to have been materially altered. I filed a straight plea of *non est factum,* making no reference to the alteration, but simply averring that the note sued on was not executed by the defendant nor

by anyone authorized to bind him, and that it was not his act and deed. At the trial the plaintiff proved that the signature to the note was the genuine signature of the defendant and closed, without offering any proof as to the alteration. I offered no proof at all. Upon the argument, counsel for the plaintiff insisted, first, that my plea was bad—that the defense I was making could not be made in that way, and, second, that his proof of the execution of the note had met the plea. I insisted upon the contrary on both points and cited Chitty. Judge Walker promptly sustained me, and the suit was dismissed.

Judge Walker was succeeded as judge by his former partner, Judge Thomas P. Bateman, who also lived at Savannah. They had been partners for about five years—from about the close of the war to 1870; and Judge Bateman had absorbed much judicial wisdom from Judge Walker during their association. The two men were as different as two men could well be. Judge Bateman had, in his youth, had little education and no literary culture—could not even write grammatically; but these defects of education were largely compensated for by a vigorous mind and strong and practical common sense; and he was well grounded in the law. He had the same veneration for the common-law as Judge Walker, but not so much prejudice against equity. He had been a very successful practitioner, in general practice, had the knack of both making and saving money, which Judge Walker had not, and from his practice and his salary as judge, and accruing interest, he accumulated and left at his death a fortune of more than a quarter of a million dollars.

Judge Bateman's oddities and eccentricities, though numerous and peculiar, were unlike those of Judge Walker except in one respect—they were equally careless of their person and dress. Judge Bateman loved his toddy, and sometimes, before he became judge, had his "sprees"; Judge Walker never indulged at all—I never knew of his taking a drink. Judge Bateman cared nothing for cards; if he ever took part in a game during the forty years of my acquaintance with him, I never knew or heard of it. Nor did he indulge in chess, checkers, backgammon or any game of chance or skill. His only diversions were fishing, and writing in and poring over his "Diary," of which I shall have more to say hereafter.

In person, he was about six feet tall, heavy set but well proportioned, slightly stoop-shouldered, with a large head, full face and high and well shaped forehead, gray eyes, dark though not black hair and beard, sides of his face shaved, leaving beard around his chin and on his upper lip—at least this was his general habit, though sometimes he was clean shaven; and in his later years his hair and beard were snowy white. All in all, his personal appearance was quite impressive. I have said he was careless of his person; I mean of his clothes, for he was exceedingly neat in his person proper, loved a bath, and always kept his beard and mustache neatly trimmed, his hair combed, and his hands and nails immaculate.

He had a most keen sense of humor, and often himself indulged in the quaintest of humor. An illustration or two of this habit of quaint humor may not be out of place here. On one occasion, at Savannah, he was preparing for a fishing trip with a

small party, to upper Horse Creek, to be gone all day; he handed to George Porter, a negro man who generally acted as his lackey-boy, a five-dollar bill with instructions to provide luncheon and refreshments for the trip. Upon George's return to the office where the Judge lived—for he was a bachelor and lived and slept in his office—the judge asked him what he had bought, and was told that he had bought a quarter's worth of sandwiches and four dollars and seventy-five cents' worth of liquor. The judge replied, "Why in the hell did you spend so much money for sandwiches?"

On another occasion, in court at Waynesboro, a misdemeanor case, for assault and battery, was submitted on a plea of guilty, by old man Thomas J. Cypert, a country lawyer, and attorney for the defendant. The judge, according to the usual practice in such cases, heard the proof, in order to determine the fine, or the punishment, whatever it should be. The prosecutor, called by the state, made out a pretty clear case of unprovoked assault, in which the defendant had knocked him down with his fist. Mr. Cypert then called other witnesses who brought out the fact that the prosecutor had called the defendant a "damn liar" before he struck him. In disposing of the case the following colloquy occurred between the judge and the defendant's attorney:

Judge—"Well, Mr. Cypert, on the prosecutor's proof I had made up my mind to fine your man ten dollars, but the other evidence shows that the prosecutor called the defendant a damn liar, and I'll give him five dollars credit for that, and let him off with five dollars."

Cypert—"Ahem, Ahem—If your honor please, I

beg to remind your honor that the prosecutor called the defendant a 'damn liar' twice."

Judge—"That makes no difference—he ought to have knocked him down the first time."

And again, on another occasion at Waynesboro, the judge tried a little case in which Dr. Buchanan, a very penurious and close-fisted local physician, had been sued for a bull calf which the proof showed was worth about fifteen dollars, and the doctor lost the case. During the same week, the judge had called in Dr. Buchanan to prescribe for a slight cold, or some other slight ailment, and at the end of the week called on the doctor for his bill; it was fifteen dollars, which the judge paid. On his way home the judge said to a friend, "Well, I tried that bull calf case of Buchanan as fairly as I could, and his loss of the calf was not my fault, but I'll be damned if he didn't make me pay for it."

Many similar instances of the judge's quaint humor might be related, but one or two others, of a somewhat more serious nature, must suffice.

An appeal to the Supreme Court was taken from a conviction for a felony before Judge Bateman and a jury in Decatur County. The case was reversed by the Supreme Court and remanded for a new trial, without any written opinion, or any indication of any error committed in the court below. Upon the calling of the case after the remand, the judge said:

"Mr. Attorney General, I tried this case before the best I knew how. I know of no error that was committed and the Supreme Court has pointed out none. If I should try it again I'd try it just like I did before. So let the defendant be discharged and the case stricken from the docket."

And this was done, but this time the state ap-

pealed, and on this second appeal the Supreme Court delivered a written opinion pointing out the errors.

I have had occasion in a former article to describe the characteristic action of Judge Bateman in a case I tried before him at Waynesboro, of the prosecution of a young negro on a charge of burglary or house-breaking with intent to rape—which may be referred to in further illustration of the grim and quaint humor of this great judge.

One other instance, which also occurred in Decatur County. The barn of a very popular preacher of the county had been burned. The owner of the barn had a young negro of the neighborhood arrested and indicted for the crime. Several young lawyers volunteered to assist the attorney-general in the prosecution. After the conclusion of all the evidence, which was wholly circumstantial, and during a brief recess, these young lawyers gathered around the judge, and one of them asked, "Judge, are you going to let us all take a whack at the case?" The judge replied, "Well, I think I'll first take a whack at it myself." And so, when the session was resumed, the judge called the attorney-general to him and said to him that he did not think a case had been made out, and that he could not approve a verdict of guilty. Whereupon the attorney-general said that if the judge felt that way he had as well consent to a verdict of not guilty, and this was done, and the negro discharged. To show the good sense of the preacher, and the confidence reposed in Judge Bateman, the preacher later met the judge and said to him, in substance, "Well, Judge, I thought that negro was guilty and prosecuted him in good faith; but you listened carefully to the evidence, you know

the law, and can better judge of the matter than I can, and I am satisfied, thoroughly satisfied."

That Judge Bateman was a great judge all lawyers who knew him will attest. Honest, firm and incorruptible. That he could be swayed by any feeling of friendship, favor, partiality or prejudice was unthinkable. The only failing he had in his judicial office—if indeed that was a failing—was, that he could not refrain from leaning to that side that he believed was in the right; but this fault, if a fault, was redeemed by the fact that this leaning was rarely, if ever, manifested during the trial. He would rule on the evidence and charge the jury with the strictest impartiality, without manifesting his own leaning or opinion; but after the jury had acted, if he thought their conclusion was wrong, he had the courage and boldness to set their verdict aside. He had not the fault which, I think, is too common with many present day judges, of "passing the buck" to the jury—shoving the responsibility of a wrong and unjust judgment upon them.

In that day, there was no such thing in our practice as a "directed verdict." Had there been, a great many cases tried before him would never have reached the jury; but under the then practice all cases had to go to the jury, and the judge's time to act came only after they had acted. He never evaded responsibility for the judgments of his court by the cowardly refuge, "O well, the jury has decided, and I will not disturb their verdict—it is not for me to say they are wrong."

I have referred to Judge Bateman's "Diary." Throughout my acquaintance with him it was his custom to keep a daily record of everything he had to do with money or business. This diary was kept

in blank books some eight or ten inches square and from, I should say, one-quarter to a half inch thick, which he carried around with him in his saddle-bags. He never received money nor paid out money, or bought or sold anything, or made any trade, but the details of it, in brief narrative form, were entered, usually in pencil, in this little book—or these little books, for he filled many of them. Not a nickel was spent for tobacco, even, that he did not enter it in this diary.

And how this diary served his estate after his death and embarrassed others, and especially myself, I must defer to the next chapter.

XXVI

Judge Bateman's Diary—How it Helped His Estate—How it Embarrassed the Author—The Cox Note—O'Keefe-Hughes $500-Bill.

THE diary habit of Judge Bateman, referred to in the previous article, was, as I have said, of material use to his estate after his death, and the source of embarrassment to others, particularly myself. It placed me in the most embarrassing position of my whole life. But before relating that incident I will refer to one in which it was of service to his estate and which came under my personal observation—Judge E. W. Ross, of Savannah, his executor, can no doubt testify to others.

Judge Bateman's home, as I have said, was at Savannah. But for many years next preceding his death he had spent most of his time at Nashville, living for the most part at St. Thomas Hospital, under treatment for some minor ailment that was quite persistent. When not in the hospital he lived with an afflicted younger brother, Monroe Bateman, to whom and whose family he was much devoted, and whom he aided liberally with both his money and his personal attention. He had purchased a home in Nashville, taking title to himself (but which he intended for his favorite niece, a daughter of Monroe, and to whom he gave it in his will); and after his brother's death, he lived in that home with

the family, until near his death, in an infirmary.

His original will was made and witnessed at Savannah, and one or more codicils, though made at Nashville, were attested by Savannah witnesses; and in the will, in more than one place, it was recited that his home was at Savannah, in Hardin County. By the will he gave his entire estate to the children of his brother, Monroe, although he had several other nieces and nephews and near relatives living at Nashville and in the West, who would have shared in his estate in the absence of a will.

The will was duly probated at Savannah. These excluded relatives desired to contest the will, and they employed able counsel, in Texas and at Nashville and elsewhere, for that purpose; but, realizing that such a contest in Hardin County, among the people who knew Judge Bateman so well, would be fruitless, they sought, in order to have the contest at Nashville, to have the probate in Hardin County set aside on the ground that the domicile of the testator was at Nashville in Davidson County, and that, consequently, the courts of Hardin County were without jurisdiction; and accordingly a petition for this purpose was filed at Savannah.

I was employed by the executor to assist in the defense. The first petition was dismissed on some technical ground not affecting the merits. A second petition was filed, in the county court, and there dismissed and appealed to the circuit court; and there tried on elaborate proof before Judge Barham. It was there that Judge Bateman's "diaries" were introduced—a number of them. It appeared that the judge had continued his "diaries" while in Nashville, and the entries were so convincing that the judge had never abandoned his Savannah domi-

cile that, notwithstanding he had not lived at Savannah for 12 or 15 years, they left no doubt, that, in legal contemplation, his real home was still there. And so, this second case was dismissed and, on appeal, was promptly affirmed. An effort was made to remove the controversy to the Federal Court, but this failed, and the effort to contest was abandoned. It is doubtful what the result of the case would have been but for these "diaries."

Now for the incident of my embarrassment by them. To understand the situation the background must be given.

Mrs. Mary Walker, widow of Judge Walker, was executrix of her husband's will. At the administratrix's sale of Judge Walker's library, Col. N. N. Cox, of Franklin, bought three hundred dollars' worth of law books, for which he gave his note, payable to Mrs. Walker, due in twelve months. Col. Cox was then attending the courts regularly in Perry County, in Judge Bateman's circuit, but never attended at Savannah. Mr. D. T. (Tony) Street, an ex-merchant and fine bookkeeper, with an office uptown, was Mrs. Walker's general agent in winding up the estate, and Judge Bateman was advising and assisting the widow of his old partner when and as he could.

Some three or four or five years after this sale, Judge Bateman, poring one day over his old "diaries" at his office, came upon an item dated at Linden about the time of the maturity of the Cox note to Mrs. Walker, reading substantially as follows: "Collected from N. N. Cox $150 to be credited on his note to Mrs. Walker. Gave same to John A. Pitts to be handed by him to D. T. Street for Mrs. Walker." And at the same time it occurred to the

judge that he had later collected the whole note from Col. Cox, and that there was no credit on it. So, turning through his subsequent diaries, sure enough, there was an item showing collection of the whole note with interest.

Judge Bateman had no independent recollection of the first item, the $150; so he came over to my office, with his diaries, showed me the items, and asked what I remembered about them. I didn't remember a thing about them. Mrs. Walker had, meantime, left Savannah and gone to live with her brother, Mr. Walter Ingram, in Maury County, but Tony Street was still there, with his office and books at the same place. We went to Mr. Street and explained the situation to him. He was very positive, dogmatically so, that he had never received the $150. We asked him to look through his books; he demurred, averring it was of no use; he finally consented for us to examine his books, which we did; there was no such item on them.

It was not my custom then to either take or give receipts for monies handled for accommodation in this way; moreover, Jeff Ross, a young lawyer of Savannah, had been accustomed to attend the courts at Linden, returning, as I did, to Savannah at the end of the week, while Judge Bateman went on directly to the next county; and it occurred to me that possibly the money had been given to him instead of to me; but Jeff was then in Brazil, South America. I had been corresponding with him and had his address. So Judge Bateman and I separated, with the agreement that he would write to Mrs. Walker and Col. Cox, and I would write to Jeff Ross, and in the meantime, awaiting their replies, that I would make thorough search among my

papers for any receipt or memorandum I might possibly have on the subject.

My search was fruitless, I had nothing. In due time Mrs. Walker replied that she had never received the money; she remembered the collection of the whole note, but was very positive she had never received the $150. Col. Cox replied that he had no recollection of paying the $150, but that he had hunted up the old note, and there was no credit on it. Eventually Ross replied that he had no recollection whatever of the matter.

And there I was. Can you imagine a more embarrassing situation? I could not doubt Judge Bateman's diary. Knowing him as I did, I would have been ready myself to almost swear to its accuracy; yet I knew that I had not misapplied this money; that was impossible; one hundred and fifty dollars was a large sum to me at that time, and I just knew, to a moral certainty, first, that I had not misapplied it, and secondly, that if I had, I could not have forgotten it. I would have paid the money, poor as I was, but for the implied admission of guilt such payment would have carried. Everybody concerned was honest, and I felt sure there was a mistake somewhere, and I cherished a faint hope that time would reveal it.

Thus the matter rested for a year or more, and finally that "Divinity which shapes our ends" came to the rescue and solved the mystery.

One day Judge Bateman approached me with a broad and satisfied smile on his face, and a letter in his hand from Mrs. Walker. The letter contained a check for $150 plus interest from the date of Judge Bateman's diary entry, payable to Col. Cox, and stated, with profuse apologies, that Mrs.

Walker had just found an old memorandum book that refreshed her mind as to the whole transaction, and showed, she was sorry to say, that she herself was responsible for the whole trouble, and she was hastening to make amends. Her explanation was in substance this: That she was in Mr. Street's office one day, when he handed her $150 which he said Mr. Pitts had given him, coming from Col. Cox and to be credited on his note; that not having the note with her, she made an entry of the item in a little memorandum book she had with her, intending to get the note and enter the credit upon her return to her residence, but forgot it and the matter passed out of her mind; and that the little memorandum book had been mislaid and forgotten, until she had just come upon it accidentally.

What a lesson is here for tolerance of human frailties! No better woman ever lived, I think, than Mrs. Walker. The injury she did me in denying so positively that she had ever received this money, was wholly innocent and unintentional, as was that of Tony Street. And what a caution is here, too, against placing too much reliance on the human memory! Indeed, in human testimony! The most honest witness may be mistaken, in observation and perception as well as in memory; and how wise is that ancient rule that the accused must be given the benefit of every reasonable doubt. The evidence attainable prior to the discovery of Mrs. Walker's little memorandum book, would have been sufficient before any jury not knowing the parties to have convicted me of the criminal misapplication or conversion of that money; possibly my denial, if they had known me, might have created a reasonable

doubt, but nothing more—in the minds of many I would have been thought a guilty man.

The incident taught me a valuable lesson as it should every reader of this article. Thereafter I was careful to give and take receipts in such cases, indeed to make and keep written memoranda of all business settlements; and I had occasion many, many times to be thankful that I had done so. One such impressive incident I may be pardoned for relating here.

One day, as I was driving from Waynesboro to Clifton, on my way home through the rain, I was hailed by Mr. D. J. O'Keefe from his office near the road, who came out to me under his umbrella and handed me a bright, crisp five-hundred-dollar bill, the first I had ever seen, and asked me to hand it to Col. T. R. Hughes at Clifton, my uncle and a merchant, and tell him to credit it on O'Keefe's account, and that O'Keefe would be down in a few days and settle up for the year's business. I insisted on giving him a receipt, but he hooted at the idea, especially as it was raining and he had prepared no receipt; so no receipt was given. On my arrival at Clifton I walked into my uncle's store, and at the desk at which he was standing I wrote out a short receipt reading: "Received of Jno. A. Pitts $500 to be credited on account of D. J. O'Keefe," dating it. This receipt I shoved over to my uncle and said, "Sign that, and I will give you $500." He burst into a loud laugh that could have been heard for a block or more, and said, when he could get his breath, "What has happened? When did you get so particular as all that?" I said, "No matter when—until you sign that receipt you don't get the

money." He signed it, and I gave him the $500 bill and delivered O'Keefe's message.

O'Keefe was running a tannery and carrying a yearly account at my uncle's store, which was usually settled and closed at the end of the year, as was quite customary in those days; but for some reason O'Keefe did not make settlement for that year, as he expected when he handed me the money, and none was made until the end of the next year. When they got together and ran over the account O'Keefe was surprised to find the balance against him so much more than he expected. He had kept up, he thought, with the amount he owed, and was sure there must be some mistake somewhere. They were both perfectly honest and trustful of each other. They spent a day or two, cudgeling their brains and trying to locate the mistake, if there was one. The difference between them was approximately $500. Finally O'Keefe remembered the money he had given me, and they ran through the long account to find the item, but it was not there. My uncle was very positive that he had not received any $500 from me, while O'Keefe was equally positive that he had sent the money by me; so they agreed to suspend the settlement until I could be seen.

I was passing through Clifton every few weeks; and so, one day as I was returning from Linden, my uncle asked me about the matter, stating O'Keefe's claim, rather as a joke, so positive was he that nothing of the kind had occurred. I saw at once his state of mind and, to avoid any controversy, put him off with the statement that I would think over the matter and see him again in a few days when I expected to return. So I hunted up the re-

ceipt when I got home. My uncle's signature was so peculiar and characteristic that neither he nor any one who ever saw it could doubt it.

On my return to Clifton I showed my uncle this receipt and reminded him that the money was a $500 bill, a fact forgotten by both him and O'Keefe. He was genuinely surprised, and there was no loud laugh as when I gave him the money. But he could not doubt his signature, and so entered the credit at once, although he could not remember a thing about it; and the strange thing about this transaction was that, as my uncle afterwards told me, he could never, even with the details of the receipt in hand, discover any trace of that $500—where it went or what became of it, he never knew to the day of his death some years later.

Now, Mr. Reader, and especially you young reader, just think a moment of what would have been the result if I had neglected to take that receipt. Undoubtedly I would, innocently, have at least lost the confidence and respect of one of these gentlemen; if I had forgotten the circumstance and sided with my uncle, O'Keefe would have believed me a knave; and if I had remembered it, and sided with O'Keefe, my uncle would have died believing I was mistaken and he had been imposed upon. The receipt was not subject to these frailties of memory, and was able to save the honor and the feelings of all of us.

I could relate several other instances in which my preservation of written evidence of business transactions has not only saved me from embarrassment, but greatly heightened the respect and patronage of those who, through mistake, were ready to suspect and accuse me; but these must suffice.

XXVII

Judge E. D. Patterson—His Northern Birth and Education—Migration South—Confederate Soldier—Marriage at Savannah—Personal Appearance—Estrangement from Father and Reconciliation—Character as Man and Judge—Rebuke of Partisan Jury—Negro Boy's Defense of Alibi.

PRIOR to the Judicial elections of 1886, changes were made in the Judicial Circuit putting Hardin and Wayne Counties in the Ninth Circuit; and Judge E. D. Patterson, of Savannah, was elected that year as Judge of that Circuit, Judge Levi S. Woods of Henderson County succeeding Judge Bateman in the old Eleventh Circuit. Judge Patterson served, as I recall, until 1897 or 1898 some eleven or twelve years, when he resigned on account of ill health, and was succeeded by appointment of Judge R. B. Williams of Lawrence County. It is worthy of remark that for a period of fifty years prior to 1898, with the exception of the short period of Judge Hurst's service from the close of the Civil War to 1870, the Judge of the Circuit embracing Hardin County resided at Savannah—a small town during all this period, of a population of some 300 or 400 to not exceeding 1,000 or 1,200.

I should never cease reproaching myself did I not, in recording my pleasant recollections, pay more than passing notice to Judge Patterson. I knew him intimately for more than thirty years, and no

one of all my acquaintances was held in higher esteem, or, I am sure, more deservedly. He was one of the cleanest and best men I ever knew, and one of the best Circuit Judges.

Judge Patterson was born and reared in Ohio, of a fine family. Completing his education at Baltimore shortly prior to the outbreak of the Civil War, he came South, locating at Florence, Alabama. Early in that struggle he joined the Confederate army and made a brave and gallant soldier, was seriously wounded, carrying a minnie ball in his body for many years which, entering from the front, lodged near his spine, giving him intense pain and prostrating him from time to time by its ulceration and necessitating lancing from the back. Whether the ball was ever removed I do not recall—my impression is it was not, but continued to pain him, at times, until his death. His sympathies and sentiments were Southern in every fiber of his being.

Shortly prior to my location at Savannah (I think in 1869 or 1870), Judge Patterson courted and married Miss Mildred McDougal, daughter of Mr. Archibald G. McDougal, Nestor and leader of the bar at Savannah, and the most cultivated, accomplished and beautiful woman in that whole section. Judge Patterson was, at that time, the handsomest man in all that country. Six feet tall, straight and erect, well proportioned and filled out, with dark hair and sandy beard, gray-blue eyes, prominent and high forehead, of blond complexion, his skin as smooth, soft and clear, and peachy-pink as a maiden's, and he carried himself with an unaffected dignity and courtesy little less than royal. And his appearance did not belie his character; he was really all that he appeared to be—the very soul of

honesty, courtesy, liberality, kindness, justice, truth, frankness, and cordiality. He and his lovable wife were indeed well-mated; and their married life was one continuous connubial jubilee. They lived with Mr. McDougal, who had long been a widower, in his handsome home near town; and the whole family, including the children of Judge and Mrs. Patterson—of whom there were some half a dozen —constituted one of the happiest households I have ever known.

Judge Patterson had one or more brothers in the Federal army; and after the war his father and brothers were, not unnaturally, Republicans and bitterly prejudiced against the South and all those who had sided with it. So bitter was the feeling of the elder Patterson against his son, Ed, on account of his course during the war and his "Democratic" and Southern attitude afterwards, that he made his will and excluded him from all participation in his estate. This estrangement existed when I went to Savannah in 1871, and for some time afterwards. A few years later Judge Patterson and his wife made a visit to the old people in Ohio, and they, and especially Mrs. Patterson, so charmed and captivated these old people that all bitterness of the past was forgotten, the will changed, and the son restored to the full and unimpaired parental affection; and thereafter the elder Pattersons, the Judge's father and mother, spent their winters, for many years, at Savannah, in the delightful home of Mr. McDougal and Judge and Mrs. Patterson. What a beautiful illustration is this of the practical truth of the noble admonition of Senator Lamar to the embittered sections in the days of the bloody shirt: "Men of the North and men of the South:

Know one another, and you will love one another!''

Judge Patterson had been admitted to the bar just before the war. After the war he resumed the practice at Florence; and soon after his removal to Savannah, upon his marriage, he was appointed by Chancellor George H. Nixon as Clerk and Master of the Chancery Court, which position he held for some six or seven years, meanwhile practicing to a limited extent in other courts. He finally resigned and, with his father-in-law, formed the firm of McDougal and Patterson which continued until Mr. McDougal's death, in the late eighties or early nineties, as I recall. The only courts Judge Patterson attended, other than those of Hardin County, were the Circuit and Chancery Courts at Waynesboro, and the Supreme Court at Nashville and Jackson. We usually accompanied each other to those courts, and often occupied the same room at the hotel.

I left Savannah before he became Judge, but continued to practice in his Circuit, even after I came to Nashville in 1888. He was one of the pleasantest Judges to practice before that I have known; and I can conscientiously make this affirmation: that I never appeared before any Judge with a surer confidence of ultimate success if I knew my cause was just. He had that rare and uncalculating courage that guarantees to the litigant, as far as is humanly possible, right and justice, and guards against the whims, caprices and prejudices of juries; he never shirked that high judicial responsibility. I may be pardoned for giving one illustration of this admirable quality of Judge Patterson.

A client of mine, in Wayne County, purchased a small tract of land for $800, paid the seller the cash,

and took his deed, duly acknowledged. This deed my client immediately delivered to the County Register for registration. The Register placed the deed in his pocket, where he carried it for three or four days, without recording it or noting it for record. Meanwhile, a creditor of the seller seized the land and sold it for his debt, about equal to the value of the land, which my client thereby entirely lost. My client thereupon sued the Register for neglect of official duty, to recover his loss.

In those days partisan politics figured in the courts more than at the present. Wayne County was largely Republican, and the County Register was the Republican boss of the county. The sheriff of the county was also a Republican, and one of the creatures and heelers of the Register. My client was a Democrat. There were then no jury commissioners, and when a temporary jury was needed it was summoned by the sheriff from the bystanders, or from the town or adjacent neighborhood. My case against the Register came on for trial on the last day of the term, after the regular jury had been discharged; accordingly the sheriff was ordered to place a jury in the box, which he did. I saw at once that all twelve of the jurors were Republicans and intimates of the defendant Register, and challenged all I was allowed to, and their places were filled by the sheriff, with the final result that all the jurors were Republicans and intimates of the Register, except one young man whom I knew to be a Democrat. I felt sure that this young man would hang the jury —that he could not be swayed by political considerations or favoritism to reject so just a claim, for there was no dispute about the facts—and I proceeded with the trial, making out an impregnable

case. (But, alas, as I afterwards learned, this young man upon whom alone I relied, was then a borrower of quite a large sum from the Register, and thus beholden to him.)

Judge Patterson, who was presiding, gave a full, fair and explicit charge, after a brief argument by counsel. The jury retired, and within five minutes returned with a verdict in favor of the defendant. Before they left their places, and in their presence, I arose and moved the court to set aside their verdict because against all the evidence, and to order a special jury, to be selected by the court, for the trial of the case at the next term. Both motions were promptly granted, without argument; and at the next term Judge Patterson named a jury of six Republicans and six Democrats, all prominent and upright citizens, before whom the case was tried and a verdict and judgment rendered for the plaintiff, my client, for the full amount claimed, which was paid by the defendant without appeal.

All this action was taken by Judge Patterson in the most quiet and modest way, without bluster or ostentation, with no acrimonious remarks, but with a firmness and promptness more condemnatory of the Register, and of such coups as he had attempted, than could have been the severest lecturing or animadversion. I have not mentioned the names of the persons involved in this litigation, for obvious reasons, but no doubt many Wayne Countians will remember the circumstances.

A funny incident occurred in one of the counties of Judge Patterson's Circuit—I need not say which county—that amused him very much, and which I may relate in concluding. A negro boy had been indicted for petit larceny—stealing potatoes from

a neighbor's barn. When arraigned for trial, accompained by his gray-headed old father, it appeared that he was not able to employ counsel, and the Judge appointed a young attorney to defend him, and directed them to retire to a private room in the court house for consultation.

After a half hour or so, they returned, and the attorney announced that the defendant was ready for trial.

A jury was sworn, and the State put on its proof, which showed a pretty clear case of guilt, though the evidence was mainly circumstantial.

The defendant was then sworn as a witness in his own behalf, and it very soon developed that his defense was an *alibi*—that he was not at the place of the theft at the time, and could not, therefore, be guilty.

The prosecutor, Mr. Jones, and the defendant lived in the same neighborhood, and the State's proof showed that the potatoes had been stolen on a certain night between bed-time and daylight next morning. After the usual preliminary questions, the examination of the defendant by his attorney proceeded as follows—the old father sitting by, watching with the keenest interest and occasionally whispering suggestions to the attorney:

Attorney: "Sam, did you steal Mr. Jones' potatoes?"

Sam: "Naw-sur, naw-sur. Ah never stole no taters from Mr. Jones. Naw-sur, naw-sur."

Attorney: "Tell the jury where you were that evening and that night, Sam."

Sam: "Well, ah was up at Uncle Ben's a playin' wid de boys twell 'bout a hour ba sun in de ebenin'."

Attorney: "And where did you go then?"

Sam: "Ah went right straight home."

Attorney: "And what did you then do, Sam?"

Sam: "Well, we all et supper an sot around awhile, an den we went to bed."

Attorney: "Went to bed at home?"

Sam: "Yassur, yassur, right dar at home."

Attorney: "What time did you go to bed, Sam?"

Sam: "Ah dunno sur, zackly whut time it wus. We did'n have no clock—jest common bed time ah reckin'."

Attorney: "Well, did you stay at home all the time till you went to bed?"

Sam: "Yassur, O yassur, right dar all de time."

Attorney: "And after you went to bed did you stay in bed all the time till next morning?"

Sam: "Yassur, yassur—all de time 'ceptin, er a —'ceptin er a—"

Then, as Sam hesitated, the old father broke in, rising from his seat and shaking his finger warningly at Sam, with—"'Ceptin!—'Ceptin!—'Ceptin nuffin'—Whyn't yuh go on an tell it lack yuh lawyer tole yuh to tell it?"

Of course the defense broke down as the court room resounded with laughter, and the poor boy was convicted. When the hilarity was over and the case ended, the Judge mildly and kindly upbraided the young lawyer, whose education in legal ethics had obviously been neglected, and that was all. The old darky was entirely unconscious, to the last, of the humor of his performance; but the young lawyer learned a lesson which he never forgot.

XXVIII

Chancellor Nixon—Personal Characteristics—Resuscitation of Nashville and Florence Railroad—Chancellor Abernathy—Characteristics—Instance of His Reversing Himself Before Entry of Decree—General Reflections on Integrity of Judiciary.

CHANCELLOR George H. Nixon was, in his day and section, quite a noted man. His case illustrates the fact that it is not always the most cultivated man and learned lawyer that makes the best judge. Coming out of the war as an ex-Confederate Colonel of infantry, past middle age, with very little education and less experience at the bar, though a licensed lawyer, he was elected Chancellor of the Ninth Chancery Division in 1870—not at all because of his qualifications for that office, but because of his sturdy character as a man and his popularity as a brave and gallant soldier. He was quite a pompous old gentleman, carried himself with royal dignity, in his immaculate black suit and tie, long Prince Albert coat, and tall silk hat—he never dressed otherwise—was of portly build, erect, about six feet tall, full-faced, clean-shaven, and bald-headed; and he impressed the common people as a very great man—and in a way he was.

As first, Judge Nixon's ignorance, not only of the rules of practice, but of the substantive principles of legal and equitable jurisprudence, was pit-

iable; but he was a man of fine common sense, a good listener, fully aware of his handicaps, and willing to learn; and it was not long until he had acquired such knowledge from the arguments of lawyers before him and his own study and investigations as enabled him to make one of the best and most satisfactory Chancellors in the state. I practiced in his court for nearly sixteen years, and I do not hesitate to say that he was, on the whole, a most satisfactory Chancellor—not brilliant, nor distinguished for legal ability, but fair, just, impartial, incorruptible, sensible, with a masterly grasp of facts, and with a discrimination that enabled him rationally to apply to the facts the governing legal principles of law and equity when presented to him from the books or in the arguments of counsel. So far as I knew or ever heard, there was no breath of suspicion or word of criticism tainting his judicial office during his whole sixteen years of service.

Judge Nixon's sense of humor was not very acute, nor often manifested. He did not engage in telling stories himself, nor appear to much enjoy them when told by others. The only exception I recall was a story he told himself about himself and which he gloated over as a fine piece of humor he had perpetrated on Chancellor, afterwards Governor, Albert S. Marks. He had attended the Convention of Chancellors which first formulated our Rules of Chancery Practice. Chancellor Marks also attended. They were both bald-headed, and, Judge Nixon said, they got into a dispute with each other as to which was the most bald-headed. The head of Chancellor Marks was onion-slick on top, but a liberal supply of hair grew around the sides and back, and it was

his custom to part his hair low down on the side, just over his ear, and comb it up over the top of his head, thus covering the sleek, naked part, and giving him the appearance, to a casual observer, of having hair all over his head. "I said to him," related Judge Nixon, "Marks, you'd be just as bald, or balder than I am, if you'd comb fair, but you won't comb fair." The Judge thought this was very witty—and perhaps it was.

Judge Nixon, while still Chancellor, resuscitated the old, long abandoned scheme of building the "Nashville and Florence Railroad," from Columbia, Tenn., to Florence, Ala., organized a company for that purpose, became president of it, and through his heroic efforts the road was extended as far as Lawrenceburg, his home.

Judge Nixon sought election to a third term; but his Division had been changed by the addition of Giles County, then much larger, in population, than any County in the old Division, and Judge Andrew J. Abernathy, of Giles, was a candidate for the nomination in the convention, held at Waynesboro, and defeated him. His defeat was a great disappointment to him—broke his heart. Then a comparatively old man, he quietly retired to his home at Lawrenceburg, where he soon after died. He carried with him to his grave the universal esteem of both the bar and the people of his old Division.

Chancellor Abernathy was elected, and served for a full term, or more—until I ceased to practice in that section. I also knew him well, traveled around to the Courts with him, and tried many cases before him. He had many points in common with Judge Nixon. Better educated than Judge Nixon,

and more experienced in the practice, he had, nevertheless, the same lack of profound knowledge of the law and practice, and the same compensating sense, good judgment of men and things, grasp of facts, and natural sense of right and justice. He was equally receptive to instruction and enlightenment —willing and ready to learn—and utterly devoid of that pride of opinion which deters many judges from correcting their own mistakes. I may well illustrate this admirable quality of Judge Abernathy by an incident that occurred in one of my cases in Hickman County, and which will be most appreciated by the lawyer reader.

Col. N. N. Cox, of Franklin, had for a client in Hickman County filed a bill of review against my client, to review and set aside a former decree of the Court "for error apparent on the face of the record"—a phrase that will be well understood by lawyers and cannot be readily explained to the comprehension of the lay reader. I demurred, on the ground that the error complained of was not "apparent," in the sense of the law, but appeared only by a deposition that had been filed in the former case, and, therefore, that the complainant's remedy was by appeal and not by bill of review; in other words, that upon such a bill only the pleadings and decree in the former case could be looked to, and not the evidence.

The case was argued one afternoon, my general proposition being conceded by Col. Cox, who sought to sustain the case on some other ground. The Chancellor took the papers, according to his custom, announcing that he would render his decision next morning. Next morning the Chancellor read a brief penciled opinion stating that in his investi-

gation at his room he had found a statement of an old statute, in Meigs' Digest—the only digest of Tennessee Reports we then had—which he presumed counsel on both sides had overlooked, to the effect that depositions taken regularly in an equity case should be and become "part of the record," without a bill of exceptions; and that he was therefore of opinion that he could look to the depositions in the former case, with the consequence that the demurrer must be overruled.

I at once arose and said in substance to the Chancellor:

"May it please Your Honor: You have made a mistake, which I ask your honor to correct now, before any decree is entered, and without the formality of a petition to rehear. I remind Your Honor that counsel on yesterday conceded my proposition that nothing but the pleadings and decree in the former case could be looked to on this bill, and for that reason I did not argue the question or present the authorities. I now hold in my hand (which was true) a decision of the Supreme Court construing the statute to which Your Honor has referred, and holding that it has no application to bills of review of this kind, but applies only to appellate proceedings; and I ask Your Honor to hear me on that question, and correct the mistake you have made."

Col. Cox sprang to his feet and protested vigorously, and for half an hour ridiculed my position, evading as artfully as he could his concession of the previous day.

Chancellor Abernathy quietly observed:

"If I have made a mistake, I see no reason why I should not correct it now. I very well remember the

concession of yesterday, and that the question was not argued. Mr. Pitts says he has authorities on the point contrary to my decision. I am going to let him present them. Proceed with the argument."

The authorities were presented, and the case reargued for perhaps two hours, at the conclusion of which the Chancellor reversed himself, sustained my demurrer, and dismissed the bill. Col. Cox, with no little bluster, appealed; but in the Supreme Court did not even assign errors, much less insist upon a reversal, and the case was affirmed.

This action of Judge Abernathy was characteristic of him. I was then a young man, of no particular consequence or influence, while Col. Cox was one of the oldest, ablest and most influential members of the bar; yet this made no difference with Judge Abernathy.

Many more or less similar instances might be related, but this will suffice to illustrate my point, that Judge Abernathy was a just man, fair and impartial, administering his office with an eye singled to the right, without regard to persons or consequences.

But I would not have it thought for a moment that I distinguish Judge Abernathy, in those respects, above the numerous other Judges I have known, nor that, by emphasizing these qualities in him, I mean to imply their absence in others. The truth is, and I am proud to be able to say this, for the honor of the legal profession, that of the very many Judges and Chancellors I have known in my almost sixty years of contact with the Courts, I have never known one that was corrupt. Of course I have known Judges and Chancellors that were sometimes swayed—unconsciously I am charitable enough to

think—by their personal relations, to counsel or parties, or by considerations of policy or expediency; but I have never known one that was actuated in a single case by what I thought was a consciously corrupt motive; and without the slightest mental reservation I can frankly say, All honor to the Bench of Tennessee.

Judge Abernathy had none of the pompousness of Judge Nixon. On the contrary, he was on the level with every man, unaffected, sociable, companionable, a good mixer, with no eccentricities of manner or dress or speech, with a fine sense of humor and a good story-teller himself, and, withal, an ardent lover of the game of chess. If he had any bad habits, I did not know of them. I know he did not swear, nor drink, nor gamble. All in all, he was a most lovable man and good Chancellor, and my sincere friend, with whom I have whiled "many a happy hour away." Peace to his ashes.

XXIX

Characteristics of "Saddlebag" Judicial Circuit and Chancery Division—No Banks, Factories or Corporations—Nature of Litigations—Peculiar Personages—Rufe Russell of Hardin County—McNairy County Triumvirate of Jopling, Shull and Thompson—Peculiar Lawyers, Hurst, Huddleston, Pace and McKinney.

THE old Ninth Chancery Division and Eleventh Judicial Circuit, both straddling the Tennessee River and comprising parts of both Middle and West Tennessee, were well dubbed the "saddlebag" Division and Circuit. They were so called partly because they straddled the river as a pair of saddlebags straddles a horse's back, and partly because the lawyers and judges uniformly carried saddlebags in which to transport their linen, toilet articles and court papers. I was often greeted, even by members of the Supreme Court, as the saddle-bag lawyers, for my saddlebags always accompanied me even to that court.

Our mode of travel from court to court was almost entirely by horseback. We had no railroads, nor other public means of transportation, except an occasional lumbering and jolty mail hack, and the roads were exceedingly rough, rocky and hilly.

This section, in these early days, had other peculiarities which now appear anomalous. For example, of the ten counties comprising the Chancery

Division, eight of which comprised the Judicial Circuit, not one contained a bank of any kind; whereas now there is not one of them but has from one to five banks, all full of money; and aside from a few saw and gristmills and blacksmith and carpenter shops, there were no factories or industrial establishments other than the farms. The pursuits of the people were exclusively agricultural, except for the dry goods stores and an occasional family grocery and drug store, and the saloons in the towns. The county towns were all small, none of them, except Savannah, exceeding two or three hundred people. Our flour and meal were made in local mills from home-grown grain; our meat was raised, killed and cured at home; such lumber as was used in building was made in local sawmills, and much of our clothing, including boots and shoes, was also made at home—not bought from stores.

Again, there was not a single corporation in the whole Judicial Circuit or Chancery Division when I came to the bar. Think of that. There were only two railroads touching the Division, and these on the outer edges—the Nashville and Chattanooga running through Benton County, and the Mobile and Ohio running through the edge of McNairy County. I had been at the bar about ten years before I had my first suit for or against a corporation, and this was against one of the railroads I have mentioned. "What, then," the nowaday lawyer may ask, "did you lawyers find to do?" Well, I answer, we had "a plenty:" Winding up estates, suits on notes and other contracts, actions of replevin, detinue, trespass, and ejectment, attachments, injunctions, construction of wills, partitions, foreclosures—in fact nearly all sorts of litigations

except those involving corporations and suits for personal injuries. Having no railroads, no street cars, no automobiles or trucks, and no great factories with dangerous machinery, we had no maimings or other personal injuries. Ox wagons and horse or mule-drawn vehicles did not run over people, especially on rough and bumpy roads. Of course, we had the usual criminal prosecutions, and we practiced in civil and criminal cases indiscriminately, as criminal cases were tried in the Circuit Courts; we had no separate Criminal Courts.

"Well," you may say, "they must have been a happy and contented people." Yes, I reply, they were. Much more happy and contented, I believe, than they are now, with all the conveniences and luxuries and vexations of modern times. They did not, perhaps, have as many pleasures and exciting diversions, but they had far fewer anxieties, disappointments and annoyances.

Moreover, this section was possessed of another peculiarity which, I venture to believe, was not enjoyed, to the same degree at least, by any other section of the state: It had, in almost every county, one or more eccentric "characters"—personages whose oddities and idiosyncracies were a never-ending source of interest or amusement. Of course I cannot here describe all these personages. I have referred to Judges Walker and Bateman of Hardin County. There were others in that county, but I will briefly mention only one; Rufe Russell. Rufe was a saddler by trade, who spent all his earnings in the saloons—a ne'er-do-well, and as poor as Job's turkey. He had one handsome brother and four or five comely and accomplished sisters, all of whom married rich or well-to-do spouses, and were prom-

inent and prosperous. Rufe seemed, quite naturally, to be envious of his more prosperous brother and sisters, and often expressed himself on the subject in his qaint and maudlin way, good-naturedly and wittily, but showing that he keenly realized the situation, which a waggish acquaintance aptly illustrated by saying that Rufe reminded him of a boy he once knew in the country. The boy, he said, was the son of a farmer who always entertained the Methodist circuit rider at dinner when he came around to preach; circuit riders being proverbially fond of fried chicken, the farmer always had fried chicken for dinner when he came; the boy was also very fond of fried chicken, as boys usually are, but his choice was a certain piece, and if he couldn't get that he wouldn't have any. One Sunday, there were several visitors to dinner, besides the preacher, and the boy had to wait, for the second table—and all of us who have been boys know what a cross that was; he hung around the door facing of the dining room, watching the large dish of fried chicken and seeing his favorite pieces disappear one by one; and finally the preacher reached over and forked up the last of these pieces; the boy could stand the strain no longer; so he rushed up to the preacher, shaking his extended forefinger at him, and said, "Jist cram it down, sir, jist cram it down—I reckin I can do without!"

In McNairy County, there was a triumvirate of noted "characters" whom I have never known surpassed for ability to amuse and entertain with quaint and ludicrous antics and stories. To be in their presence for an hour when they were yarning and reminiscing and telling jokes on each other, was worth the price of admission to the best circus.

They were W. D. Jopling, the sheriff, Calvin (or Tab) Shull, the county court clerk, and Robert M. Thompson, who had been a Federal official in the county. Jopling was the king bee of the hive; he had held every office in the gift of the county, including representative in the legislature. He would hold the office of sheriff, his favorite office, for three terms, as long as the law allowed, then some other office as long as desired, then go back to that of sheriff, and so on. He was so popular that nobody could defeat him; and yet he was the poorest kind of an officer. When sheriff, no sooner would he arrest a man on a capias—which he put off as long as he could—than he would go to work in his artful way to try to get him released or acquitted. Had there been bootleggers in those days, he would have been their ideal. Yet he was himself a law-abiding man, sober, moral, and always jolly—the mutual friend of both sides in all controversies and disputes. In person, he was tall—over six feet—slender, and as agile and wiry as an Indian; an extreme blond, with a broad, open face, his mouth extending almost from ear to ear, and with a voice of fog-horn volume; in court, when he would be out in the crowd making more noise than all others combined, and the Judge would call for order, his "Order in Court, gentlemen!" would almost raise the roof. Everybody liked him, and no one, not even the Judge, could take offense at anything he would do. His story-telling qualities were well described by an incident that occurred during the comptrollership of James L. Gaines in the seventies. "Tab" Shull was in the office of the comptroller making settlement as county court clerk, when an old gentleman who had been a member of the legislature from

some Middle Tennessee county, walked in and was introduced to "Mr. Shull, of old Purdy, in McNairy County." The old gentleman had met and become much attached to Jopling when they were in the legislature, and so, shaking hands cordially with Shull, he at once began to inquire about Jopling, and wound up with the question, "Well, what about my old friend Jopling anyway—how does he stand at home?" Shull's reply, with a twinkle in his eye, was, "Well, he has the reputation of being able to tell the biggest lie on the shortest notice and the least capital of any man in West Tennessee." The characterization was not only apt but perfectly true. In all my life I have known only one man who excelled Jopling in this quality, and that was Ben W. Waid, the oil-promoter who was sent to the penitentiary from Davidson County some years ago, but with this difference: Waid's lies were sinister, Jopling's were innocuous.

I will not detain the reader with further description of Shull and Thompson. Suffice it to say, they were fit companions of Jopling—the very soul of ready wit and humor, but all cultivated gentlemen and good citizens.

I may mention briefly other quaint characters of McNairy County among the lawyers—those citizens of that good old county having some recollection of these men will at once recognize the propriety of their mention in this connection. They were: Judge Fielding Hurst, Israel F. Huddleston, James W. Pace and James F. McKinney.

Judge Hurst, an ex-Federal colonel, and Circuit Judge under the Brownlow régime, I have heretofore mentioned in connection with our post-war troubles. After retiring from the bench Judge

Hurst engaged himself almost exclusively in farming and trading in lands—was among the largest landowners in the county. He was a very sensible man, though full of prejudice, fractious and litigious, utterly devoid of any sense of humor, serious on all subjects. I was early attracted to him, and he was my client for years, though we were of opposite political faiths and alinements. I knew him well. One summer, I conceived the idea of asking every prominent farmer I met, when I could think of it, what his "sign of frost" was. When it's going to frost, you know, is often a very momentous question to the farmer; his cotton, late corn, peas, beans, etc., if caught by an early frost, will be cut short or ruined. So I asked many farmers this question, and received many most ludicrous answers, one of which I remember was by a most intelligent and prosperous, though uneducated, farmer of west Hardin County, Mr. Vestel Hughes, and that answer was, "Well, I have allus noticed that you might look fer frost whenever the seven stars riz at dark." The only really intelligent answer I got was from Judge Hurst, which was, that there was really no reliable "sign of frost;" said he, "So long as the days are warm and clear, you need not expect a killing frost, however cold the nights may be; it is only after rains, and cool, cloudy days, which evaporate the stored heat in the earth's surface, and it clears up and turns cold, that you may look out for a killing frost." A philosopher, I think, could have given no better answer.

Israel F. Huddleston was a vain and pompous old windbag, with a long, flowing beard and large protruding pop-eyes, who imagined that he knew more law than was contained in all the books, and

yet knew none at all; with a stentorian voice, a self-esteem and assumed dignity and royalty of carriage that would have shamed Lord Chesterfield. His fad was "bills of review." He would pore over the old chancery records, find a decree between parties whom he knew, cause it to be noised about that he could review and set aside that decree, whereupon he would be employed by the losing party for that purpose. How many such bills he filed it is impossible to say—they were very numerous. I was usually employed to defend them, and for ten or twelve years a substantial part of my chancery practice in McNairy was defending these bills of review filed by Mr. Huddleston. They were usually dismissed on demurrer; not one of them, so far as I can remember, was sustained. Finally this fad of Mr. Huddleston became a sort of joke, and the people ceased to employ him for that purpose.

Mr. Huddleston was a loud and fluent speaker, but his arguments were bombastic and superficial, and rarely, if ever, carried conviction. I may very justly apply to him the words which the quaint old Scotchman, Thomas Carlyle, applied to that noted old American fraud, Wendell Phillips: "The most completely nothin' of a mon that ever crossed my threshold—naught whatsoever in him or of him but wind and vanity."

James W. Pace was a blacksmith until he was much past midle-life, when he first "took to the law." He wrote a fairly good hand, had an ordinary common school education of that day, which meant that he could "read, write and cypher," and was a glib and loud talker; he enjoyed a fair practice in small cases. He had no vestige of the sense of humor—was slow, serious, and in dead earnest

about everything. In presenting his cases to the court, he would allow nothing to be "treated as read" and passed over—all exhibits he insisted upon reading in full; even a deed, though there was no question about it, he would read through, including the certificates of acknowledgment and registration and the notation of its filing on the back; all affidavits to his pleadings he would read in full, including the jurat, and if he had exhibited an account, no matter how long or complicated, he would insist on reading it through, item by item and figure by figure, and neither opposite counsel nor the judge could stop him by any sort of waiver or persuasion. He was a real nuisance in this respect, but so sensitive that if not allowed to have his way he would complain of being denied his rights, and so he was borne with—really the quickest way to get rid of him was to let him have his way. He dressed decently, always in immaculate black, and wore a tall silk hat, and, when sober, presented quite a distinguished appearance. He was really a good fellow, in his way, perfectly honest and sincere—nothing mean or little about him, yet he was so exclusive, sensitive and self-contained that no one could be really intimate with him—seeming constantly to think some one was trying to snub him. He was a bachelor—it is unthinkable that any woman could have been attracted to him—and he loved his cup, but was not a constant or habitual drinker; would never come into court under the influence of liquor. I have known him to go to Jackson to argue his cases in the Supreme Court, get on a spree and be drunk for a week, and the court would pass his cases till he sobered up. Such a thing would hardly be tolerated now.

Judge McKinney was a short, fat, jolly old man

and able lawyer, but a poor trial advocate, as unsophisticated and trustful as a child, as honest and conscientious as a saint, well educated, but with a clumsy and hesitating power of speech that was his supreme handicap. He wrote a beautiful hand, and his pleadings, orders and decrees were models of neatness, clarity and brevity. He was honored, respected and trusted by every one, and for many years was the real leader of the McNairy bar. He was almost as broad as he was tall, bald-headed, red in the face as a rooster's comb, clean-shaven, wore his glasses far down on the end of his long nose, so that he had to throw his head away back to see through them, was woefully careless of his dress, and as he wobbled about reminded one of a great ball of pink fat that ought to be rolling. And yet, as I have said, he was a really fine lawyer, lovable old man and good citizen. His son, Robert E. McKinney, was for many years Clerk and Master of the Chancery Court, and one of the best I have ever known.

There was another class of men in McNairy County that I must mention before leaving that county, but not here.

XXX

Noted McNairy County Private Citizens—Meeks, East, Michie, Beck, Horn, Harris, Pool, Erwin, Prince, Adams, Moore, Stumph, Wisdom—Episode of Meeks and Gen. Grant—Criminal, Thad Butler Cases—Ludicrous Incident in Testimony of Character Witness.

AS I have stated, I cannot close these recollections of McNairy County without a brief reference to another notable class of its citizens who have long since passed away, not duplicated at the present day in any county in the state of equal population that I know of.

I refer to the numerous sturdy, substantial, intelligent, high-class old-time southern gentlemen inhabiting that county, and especially the central and northern parts of it, among whom were General John H. Meeks, father of my late partner, Judge M. H. Meeks; Basil G. East, a near relative, and I think uncle of Judge Edward H. East, late of Nashville; Geo. G. and Robt. W. Michie, the latter a minister; Thomas R. Beck, David Horn, Alexander Erwin, James and Stanford L. Warren, J. P. Prince, John W. Harris, Robert Pool, John Robert Adams, George Moore, John W. Stumph, N. C. Riggs, and many, many others, not to omit William S. Wisdom, the wealthiest man in the county, and whose estate I assisted in winding up though he died just before I began attending the courts of the county, and who

was the father of a distinguished progeny, namely, John L. Wisdom, late president of the First National Bank of Jackson; D. M. Wisdom, a notable journalist of Oklahoma; Mrs. John H. Duke, her husband the late president of the Street Railway Company of Jackson; Mrs. Clapp, her husband a prominent wholesale merchant of Louisville; Mrs. James H. Allen, of Allen, West & Company, her husband a leading cotton merchant of St. Louis and brother of the noted congressman, John Allen, of Mississippi; and the wife of Calvin Shull, whom I have mentioned in these reminiscences.

All these were as fine a lot of men as I have ever known to grace any community, anywhere, distinguished for their intelligence, honor, integrity, reliability, truthfulness, fidelity to trust, and all-round good citizenship. They were really an extraordinary class of men to be found bunched in one county.

Without any attempt to describe each of them, I will relate an episode in the life of one of them—typical of all of them—which illustrates his character and how that character was calculated to impress others.

General John H. Meeks (and, by the way, he earned his title by being general of militia before the civil war) lived near the village of old Stantonville, a few miles west of the battlefield of Shiloh. While Grant's army was stationed there, before the battle, scouts from Col. Hurst's regiment of Federals, made up of men from North and East McNairy, Henderson, Decatur, and Hardin counties, raided General Meeks' place and carried off all of his live stock, some twelve or fifteen head.

General Meeks went at once to General Grant,

in his headquarters at Shiloh, or rather, Pittsburg Landing, introduced himself, and made a frank statement about himself—that he was a southern sympathizer, had two sons in the Confederate army; but was an old man of peace, a noncombatant, trying to make an honest living for himself and dependents, and so forth and so on, and winding up with a statement of his misfortune in losing his live stock.

General Grant received him kindly, and they talked familiarly for perhaps an hour, General Meeks told me; and at the close of the interview, General Grant wrote out with his own hand, on a slip of paper, and gave to General Meeks what he called a "safeguard," which in substance ordered Hurst to return to General Meeks his live stock, and forbade any Federal soldier thereafter from molesting him or his property. This paper having been made known to Hurst, General Meeks' live stock was promptly returned to him, and thereafter, to the end of the war, no Federal soldier disturbed him or his property, although he was most of the time within the Federal lines.

Such was the impression one of these honest men made upon another, though they were perfect strangers to each other. In relating this episode to me, more than fifty years ago, General Meeks was, quite naturally, fulsome in his praise of General Grant as a big-hearted, broad-minded man, and no one could make him believe, partisan Democrat though he was, that General Grant ever did, consciously, anything that was wrong. He was still preserving, as he talked to me, this "safeguard" as a priceless memento. I have no doubt he kept it until his death.

But all the people of McNairy County were not of this type, be it understood. There were desperadoes and criminals of the worst class. There is no need to dwell upon them, for, like the poor, they are always with us and everywhere. I will mention only one, and that only because he was connected with one of my rather noted cases, in which an interesting event occurred.

Thad Butler, and a younger brother, were sons of Doctor Butler, a prominent and highly respected citizen of the county. These boys, from 16 to 18 years old when I first knew them, were bad boys—always in some trouble, and especially was Thad a moral and criminal pervert. They were constantly gambling, stealing, fighting, carrying pistols, or doing something forbidden by law. They finally broke up their father, who spent his all in getting them out of trouble. I knew Dr. Butler quite well, and represented him in many compromises, adjustments, and defenses of small cases against his boys.

Finally, Thad was indicted for murder, and I was employed to assist in his prosecution. While he was on bail, he was indicted in the Federal Court at Jackson for robbing the United States mails near Adamsville, in McNairy County, and his father employed me to defend him, notwithstanding I was prosecuting him in the State court for murder. The man who had robbed the mail was masked and could not be identified by the mail carrier who was held up at the point of a pistol. The mail had been last made up at Adamsville, and the robbery occurred in "Stanley Bottom" within a mile of that place. A letter containing money had been mailed at Adamsville, and the postmaster, one James Combs, a dwarf, but a very intelligent fellow, had

made up the mail and kept a memorandum list of the bills mailed—quite a number of five-dollar National Bank bills. Six of these bills, it was claimed, had been traced directly to Thad Butler, and upon this evidence he was indicted.

Judge E. S. Hammond, of Memphis, was U. S. District Judge, and Judge Henry W. McCorry of Jackson was U. S. District Attorney. I had little hope of success in the defense. Thad strenuously denied his guilt, and his father was anxious that the best defense possible should be made for him.

The crucial point in the case was the identification of the bills traced to Butler as among the bills that had been mailed. Thad's account of his possession of the bills, if it came to that, was rather "shaky." I supposed, when we went to trial, that the bills would be fully identified by the postmaster, Combs, who was present as a witness, with his record, and the bills which had been traced to Butler, were also present, with the several witnesses by whom they had been traced. So it looked like a hard case for Thad.

The Government put on the mail carrier and the witnesses who had severally received the bills from Thad, and they could not be shaken by cross-examination. Combs was then put on to prove that these bills were the same as those which had been mailed and listed by him just a few minutes before the robbery. He had noted, as his record showed, the following particulars as to each bill: (1) the denomination, (2) the name of bank of issue, (3) the bank's serial number, and (4) the serial number of the bill.

It so happened that I had recently organized the Second National Bank of Jackson, whose issue of

currency consisted entirely of five-dollar bills, and in that way acquired knowledge of the fact (which otherwise I should not have known) that such bills were printed and issued in sheets of four-on-a-sheet, each bill exactly the same, bearing precisely the same details, except that the top bill bore a very small, hardly visible letter "a," the next the letter "b," the next the letter "c," and the bottom bill the letter "d"; I had spent several evenings in signing such bills and cutting them apart.

So, when Combs was turned over to me for cross-examination, I carefully took him over the ground to make sure that the details he had given were all that he had noted, and then asked him the direct question whether he had noted, or taken notice of, the letters of the bills, a, b, c, or d. He said he had not, and did not know they bore such letters. I then asked him this bold question: "Don't you know, Mr. Combs, that there are three other bills outstanding and in circulation exactly like each bill you have presented, in all the particulars you have noted, but each bearing a different letter?"

McCorry excitedly sprang to his feet, declaring that this was not so, and that he would prove it. So confident was he that he asked the Court to suspend the examination of Mr. Combs until he could put on a witness that would clear the matter up; and he sent an officer with an instanter subpoena for Mr. Caldwell, the gray-haired cashier of the First National Bank, whom he placed on the witness stand and examined without any previous consultation with him. Mr. Caldwell confirmed my statement, saying, "Why, certainly there are three other bills outsanding exactly like each one of them, ex-

cept the letters indicating the place of the bill on the plate from which it is printed."

McCorry was so chagrinned and disgusted that he at once declared that the jury might return a verdict of not guilty, which they did without leaving their seats, and Thad Butler went free.

Judge Hammond was convinced that Butler was guilty, and afterwards mildy upbraided the District Attorney for consenting to his acquittal, saying he would have charged the jury that they might convict on the evidence before them, notwithstanding the absence of the letters of the bills on the postmaster's list; but this was too late—the verdict had been entered.

A few months later, Butler was tried for murder in the State court, convicted of murder in the second degree and sentenced to the State penitentiary for fifteen years. After having served several years, he escaped, and, as I recall, was never recaptured. What finally became of him I do not know.

Strange as it may seem, I did not, by this prosecution, lose the friendship of either Thad Butler or his estimable father. I took no undue advantage of the boy. I may say right here that in my long practice many of my best clients were men with whom my first contact was that of antagonism in some case either civil or criminal.

A ludicrous incident occurred in another criminal case I tried in McNairy County about the time of this Butler trial, which is worth relating before I bid adieu to this good old county. I need not give the names. A man was on trial for murder, and I was prosecuting in place of the Attorney General who was ill. A rather fast "woman of the world" who was a late-comer in the county from Missis-

sippi, had testified for the defendant and been severely cross-examined, in a way that amounted to an impeachment; and the defendant's counsel sought to sustain her by proof of her good general character. A very precise speaking and prominent, though uneducated, citizen of the county—a man then holding a responsible office—was called as a witness, and the usual questions put to him as to his acquaintance with this woman, followed with the question, by defendant's counsel, "Do you know, or think you know, her general character for truth and veracity?"

His answer was, "Well, I reckin' she'd tell the truth, but as to her veracity, some sez she would and some sez she wouldn't."

Now kind reader, before you frown, recall the motto of the Order of the Garter, "Honi soit qui mal y pense."

XXXI

"Old Purdy"—Ruined by Location of Railroad Four Miles West of Town—Agitation for Removal of County Seat—Growth of Factions—Burning of Court House—Elections on Removal—Injunctions—Removal to Falcon—The Falcon Case—Theft of Depositions—Who Competent to Prove Sex of Witness—Removal Declared Void—Establishment of Town of "Selmer" —Final Removal to Selmer and End of Long Fight.

BEFORE finally leaving McNairy County, I may be pardoned for submitting a few further reminiscences that may be of possible interest to some of your readers. When I first began attending the courts of that County, Purdy, the county-seat, was the prettiest and most delightful town in the whole Eleventh Judicial Circuit. It was the seat of the most prominent and pretentious institution of learning in the Circuit, and contained what I am sure was the finest private residence in West Tennessee outside of Memphis—the John V. Wright mansion—built some years before by Hon. John V. Wright, and then owned and occupied by Mr. Israel F. Huddleston, mentioned in a previous article, besides other fine residences, notably that of Mr. W. S. Wisdom.

A short time prior to the civil war the Mobile and Ohio Railroad was projected to run through the county, and a survey was made locating the road through or by the town of Purdy; and the Railroad

Company proposed to build the road on that line, provided the county would make a subscription for $50,000 of its capital stock. An election was held on the question, but the opposition, headed by the largest taxpayers, and chiefly by Mr. W. S. Wisdom, as I was told, succeeded in defeating the subscription.

Thereupon the location was changed, and the road built just four miles west of Purdy. At Bethel Springs Station, due west of Purdy, on the railroad, a town soon sprang up which, by 1870, was a larger town than Purdy—many merchants leaving the old town and going to the new one on the railroad; and there quite naturally began an agitation for the removal of the county seat to the railroad.

The Constitution of 1870 contained a provision to the effect that an established county seat should not be removed "without the consent of three-fourths of the qualified voters of the county," but without prescribing any method of ascertaining that consent. Another provision of the same constitution, relating to county and municipal subscriptions in aid of public improvements, such as railroads and turnpikes, provided that such aid should not be given "without the consent of three-fourths of the qualified voters" of the county or municipality, "to be given at an election held for that purpose."

These two clauses of the Constitution very soon came before the Supreme Court for construction. A citation of the cases will not be of interest to the general reader; it suffices to say, that the former clause, relating to the removal of county seats was held to require the affirmative vote of three-fourths of the persons in the county on the day of election who were qualified to vote, and that three-fourths

of the "votes cast" would not suffice; while the latter clause, relating to aid to public improvements, was held to require only three-fourths of the votes "cast in the election," and that "qualified voters" not voting were to be disregarded. Lawyers, and indeed all intelligent readers, will readily perceive the distinction.

Not very long after 1870, the County Court of McNairy County began to order elections on the question of the removal of the county seat from Purdy to some point on the railroad. A large majority of both the people and the members of the County Court favored the removal; the people of Purdy, and the Northern part of the county opposed removal. On the face of the returns, these elections showed a large majority, and sometimes a three-fourths majority of the votes cast, favorable to the removal; and the County Court would uniformly declare the removal carried; the no-removalists would thereupon at once enjoin the removal; the injunction would be sustained, and then a new election would be ordered, and the whole process repeated.

This went on for ten or twelve years, the partisan feeling between the removalists and no-removalists growing more and more intense. Burnings in the town of Purdy resulted, and eventually the Courthouse was burned; many personal conflicts and fights occurred; the Courts at Purdy were for a considerable period held in an old storehouse on the public square; the County Court refused to make any provision for rebuilding the Courthouse.

I and my firms, first of Pitts & Cunningham of Savannah, until 1884, then of Pitts & Hays, and Pitts, Hays & Meeks of Jackson, were retained, gen-

erally, by the "Purdyites" or no-removalists, to fight the removal, in the interest, especially, of "Old Purdy," and we obtained the injunctions referred to. Several of the elections, at first, were on removal to Bethel, on the railroad four miles west of Purdy. Finally, after the Courthouse was burned, Mr. A. W. Stovall, a prominent lawyer of the county, was sent to the legislature for the purpose of procuring legislation to facilitate the plans of the removalists, and such legislation was enacted which, I may say in passing, we succeeded in avoiding, or having nullified.

And thereafter, and after the Courthouse was burned—I think in 1884 or 1885—an election was ordered and held on the question of removal to Falcon, a little station on the railroad southwest of Purdy, having as I recall two stores and two or three residences. On the face of the returns, more than three-fourths of the votes cast were for removal. The County Court promptly declared the removal carried, refused to make any inquiry as to the number of qualified voters in the county, not voting, entered an order directing the removal at once, and, having previously made all arrangements necessary for such an event, proceeded to load upon wagons all the records of the county and move them to Falcon where they were deposited in an old storeroom, before an injunction could be obtained. This "removal" was accomplished in the night-time; and the "removalists" were jubilant, thinking they had "crossed the Rubicon," now that the removal, as they claimed, was an acomplished fact, which the courts could not disturb.

I had meantime moved to Jackson, and my firm was then Pitts & Hays. We filed our bill for tax-

payers—the old Purdyites—as promptly as we could, attacking the removal on the ground that three-fourths of the qualified voters of the county had not consented to it, and that consequently it was void and the lawful county seat still at Purdy. The defendants—the members of the County Court —made a vigorous fight, employing not only all the local lawyers, but also General Alex. W. Campbell, of Jackson, and Col. W. M. Inge, of Corinth, Miss., both fine lawyers; they demurred to our bill, but Chancellor Nixon over-ruled the demurrer and sustained the bill; they then answered, denying our averments, and demanding a jury to try the issue.

This issue was, whether there were "qualified voters" in the county on the day of election who did not vote sufficient in number, when added to the negative vote in the election, to neutralize or overturn the three-fourths affirmative vote cast in the election. No question was raised as to the legality of the votes cast and counted.

Now there were some remarkable and unusual incidents connected with the progress and trial of this case. The courts were held, pending the case, at Falcon, in the old store-house I have mentioned —the files and records being kept loosely on the shelves which had formerly held dry-goods and other merchadise.

Robert E. (Bob) McKinney was Clerk and Master, and a staunch "Purdyite." We arranged with him to take the proof, which was a very simple process. We prepared and had printed forms for the depositions, that is, the questions, embracing such questions as were necessary to bring out the fact that the witness was a "qualified voter" of the county, and did not vote in the election, with blank

spaces for the answers. McKinney would go to some designated place in every Civil District of the county and, proper notice having been given, would take on these blanks the deposition of each qualified voter who had not voted in the removal election. In this way between 1,300 and 1,400 depositions were taken, all of which, after they were taken, were carefully listed and tabulated by Mr. Hays and myself. There was no question as to the regularity of the depositions—we saw to that very carefully.

Finally the case was made ready for trial. It was to be taken up on Monday, the first day of the term. Feeling was running high, and there were a number of unscrupulous, reckless and desperate fellows around, and all sorts of threats were being made; there was much suppressed excitement.

On arriving at Court Monday morning, we found that more than half our depositions had been stolen, leaving us less than the number required to overturn the majority against us on the face of the returns. We had a strong and definite suspicion as to the thief, but we had no proof. The depositions had been stolen between Saturday night and Monday morning. Just what to do was a puzzle; the Chancellor and a jury were in attendance, and the court in session, ready to proceed with the trial. After a brief consultation, Mr. Hays and I determined to submit the matter frankly to General Campbell, the leading counsel for the defense, whom we knew to be a high-toned and honorable gentleman—none of the counsel on the other side apparently having any knowledge of the theft of the depositions. So, we called General Campbell aside and informed him briefly of the situation, including our suspicions, and

showed him our tabulation of the depositions; his reaction was just what we expected from our knowledge of him; he was very indignant that such a thing had happened, and without a moment's hesitation declared that we should not suffer by it. He said he would consent that we use our tabulation in lieu of the missing depositions with the same effect as the depositions themselves, and if his associates did not agree with him and join in that consent, that he would quit the case at once. He was really as mad as we were about the dastardly act.

So this was done, and the trial proceeded. Our printed forms for the depositions contained no question as to the sex of the witness—whether man or woman. At this time only male citizens were qualified to vote. Many of our witnesses, in fact most of them, signed their given names only with their initials, and they were similarly named in the caption and in the notices, so that it did not expressly appear from the depositions whether they were male or female. All the evidence was in the form of depositions—none of the witnesses appearing personally before the jury.

In the course of the reading of the depositions, we noted with some surprise that opposing counsel would object to the reading of some of the depositions, without assigning any reason for the objection. At first we didn't understand this. But finally we noted that it was only the initialed depositions that were objected to; those signed "John," or "James," or "William," or with a distinct given name of a male, were passed by, and this enabled us to "catch on."

All the objections were promptly overruled and the depositions read, and we went on quietly, with-

out comment, till we got through. After all the depositions had been read, we asked the Chancellor to swear the Clerk and Master. This was done, and he was called to the witness stand. Opposing counsel seemed surprised, became very alert, and obviously were wondering what we meant to do. We proceeded to prove by the Clerk and Master his official position, and the fact that he had himself taken all the depositions, met the witnesses face to face, written their answers, and knew them personally. Then we asked him the question, "were they males or females?"

All the opposing counsel sprang to their feet with vociferous objections; and an hour or more was spent by them in arguing the proposition that no one but the witness himself could know whether he was a man or woman, and that the Clerk and Master was not a competent witness to prove that fact. The objection was overruled, the Clerk and Master proved that all the witnesses were men, and the case went to the jury, who very promptly, though reluctantly, returned a verdict for the "Purdyites," the removal was declared void, and the courts moved back to Purdy. The case was appealed, but promptly affirmed.

This was in 1885, or 1886, and our clients advised us that they were exhausted, and were unable to continue our general retainer to fight such litigations; that they were going to leave Purdy, and we might feel free to accept employment on the other side if occasion should arise in the future—that they were done. It was quite obvious that the struggle was not ended.

And so, a year or two later, a land company was organized in the county, headed by Mr. Pugh H.

Thrasher, an illiterate but very intelligent and energetic fellow; and this land company acquired a considerable tract of land on the railroad about half way between Falcon and Bethel, and laid out a town which Mr. Thrasher named "Selmer." It is an interesting fact that Mr. Thrasher intended to name the town for Selma, Alabama, but misspelled the name in reporting it to the Post Office Department, and so it has remained to this day "Selmer." This corporation proposed to donate to the county ground for a public square and a jail site, and the necessary streets, and to build a court house and jail, free of cost to the county, if the county seat were moved from Purdy to Selmer.

An election was accordingly called and held on the question, and a large majority—much more than three-fourths—voted for the removal; the County Court, as it had done in the Falcon case, promptly declared the election carried, and removed the records to temporary quarters at Selmer, where the courts were thereafter held. A new set of Purdyites or no-removalists employed Judge Ernest L. Bullock, of Jackson, to file a bill to have this removal declared void; and I was employed by the land company, after I had removed to Nashville, to defend this bill. I demurred, and the case was heard before Hon. Albert G. Hawkins, Chancellor, who sustained my demurrer and dismissed the bill. The complainants prayed an appeal, but did not perfect it; and so, the long and bitter struggle for the removal of the county seat ended, and the county seat of McNairy County remained and still remains at Selmer. And upon the site of the beautiful old town of Purdy is now written "Ichabod"—her glory

has departed. It is now nothing but an open field.

This series of litigations was among the bitterest and most persistent of my long experience, and the "Falcon Case," reported in the books as "Braden *vs.* Stumph," I consider one of the "causes celebre" in my practice.

XXXII

Hardin County—Early Practice Under Judge Bateman—Courtship and Marriage—First Home Planned and Built—Details of House and its Construction—Reflections on This First Home.

COMING back from old McNairy to Hardin County, where I started in my profession, allow me to take up a few "dropped stitches."

From the first, during the judicial service of Judge Walker and while Judge Bateman was in active practice, I acted as a sort of amanuensis for the latter, staying in his office when he was at home and writing his pleadings, orders, decrees and briefs at his dictation; and later, when I came to go around to the courts with him, I acted in the same capacity.

In this way I quite rapidly "got the hang" of the practice—a branch of the law which I think every lawyer will agree is exceedingly difficult to learn from books. I must have made substantial progress, for the judge very soon began to assign to me small cases to prepare and manage, giving me a share in the fees; and when Judge Walker died and Judge Bateman succeeded him early in 1874, Judge Bateman turned over to me all his pending cases to finish up, with his advice and assistance, and I quite naturally succeeded to most of his clientelle.

This association with Judge Bateman was of in-

calculable benefit to me. He was the leading and recognized best lawyer in the circuit, and had the best practice; and this association not only taught me most valuable lessons in the practice, in both the law and chancery courts, but, by putting me into his cases and in personal contact with his clients, enabled me to acquire a good business on my own account long before I could possibly have done so by my own unaided efforts. I was then very boyish-looking, and thin—weighed only 105 pounds, though five feet eight inches tall—and I heard of many friends remarking, sadly, that it was a great pity that so promising a young man should have to go so soon—they thought within a year. Unfortunately and unhappily for them they have all preceded me, every one, I am grieved to say.

I had courted a class-mate in my school-boy days at Clifton, and we had become engaged long before I went off to the law school. I was anxious to marry as soon as I was able to care for a wife. So the first thing I bought, aside from clothes, stationery and a few law books, was a small block of land, in the woods near town, on which to build a home; and then I made a contract with a saw-mill client (Armpy Johnson) for the necessary lumber, and began planning the house. All this I did months before I married.

By the fall of 1872, I began to see my way to establish a little home, and so, on November 5th of that year I married my boyhood sweetheart whom I had known since she was a "little tot" in short dresses—and only very little tots wore short dresses in those days—Melissa Ellen Ricketts—who, thanks to the Great Preserver of all life, still abides with me in health and in possession of all her faculties.

To dwell, as I should like to do, upon this happy connubial association of considerably more than half a century, would seem perhaps too personal and sentimental for these sober reminiscences, which are intended mainly to interest others rather than my own family; and so I pass that subject by, except as I may before I conclude touch upon the edge of it.

My house was really under way when we married, and within less than a year we were snugly installed in our little home that was wholly our own and unincumbered. My wife's dowery, from her mother, a widow, was a fine, fat feather-bed, with an ample equipment of pillows, pillow-cases, sheets and handsome quilts; and mine, from my father (a comparatively poor man), was the same, with the addition of a fine milk-cow and calf, and a "pair of pigs," from which we raised our pork for several years.

I have had occasion to say, I think more than once, that from my boyhood on the farm I was handy with tools; and I may add that I always had a turn and fancy for mechanics. These talents, such as they were, I put to use in the planning and construction of our home. And may I be pardoned for dwelling here just a little on this, to me at least, interesting event of my life? For it is one of my most pleasant "reminiscences."

The house I planned, let me say, was to be simply a "box-house," but a different one from any I had ever seen. The "box" form was chosen because of its cheapness and simplicity. A box-house, you know, is one made of broad planks, set on end, with no supporting interior frame except the sills and plates to which the planks are nailed or spiked at the top and bottom.

It was to have four rooms—besides a small "ell" for latticed entry and kitchen—with an eight-foot hall running through the center from front to rear; a small front "portico," with columns; each of the four rooms approximately fourteen feet square, thus making the ground plan approximately 36 by 32 feet, allowing for a space of 4 feet in the center, at right angles with the hall, for the two "stack-chimneys" and closets; the two front rooms—living room and parlor—were to be lathed, plastered and papered; the two rear rooms—dining room and extra bed room—were to have for their inside finish simply the dressed and stripped inside of the "boxing"; all floors and ceilings were to be of clear matched pine; there were to be sashed glass windows, without shutters, and sashed glass side-lights and transoms at the ends of the hall, front and rear; the roof was to be "hipped," and covered with cut heart-poplar shingles; ceilings eleven feet in the clear; all doors were to be "panelled" (and made by myself from rough, well-seasoned yellow poplar); the "boxing" was to be of clear, well-seasoned poplar planks 1¼ in. thick, 12 inches wide and 12 feet long, dressed on both sides for the rear rooms, and on the outside for the front rooms, and the cracks covered, all round the outside and on the inside of the rear rooms, with thin, neatly dressed and beaded two-inch strips; and the outside walls finished with a broad, dressed and capped baseboard, at bottom, and similar frieze-board at top, ornamented with neatly sawed "brackets" in two-foot spaces, supporting the extended boxed joist-ends or eaves; all dressed woodwork was to be painted—the dominant ground color on the outside a delicate pink, and the trimmings, that is, the door

and window casings, sash, brackets, etc., and the inside, pure white.

Such was the house I conceived and planned; and such a house I built, fabricating everything from the rough lumber as it came from the mill with my own hands, except, of course, the sash, the flooring and ceiling, the plastering, and the brick that went into the chimneys; even the panel doors, I made, and they were as nice as machine-made doors; and I did also all the painting and the papering, as well.

When finished, it was the cosiest-looking and prettiest little home in all that section, if I do say it myself. On the inside of the glass forming the side-lights and transoms at the front porch, or portico, I painted luxurious looking rose-vines and leaves in green, and large bursting red rose-buds, that looked, from the road in front, almost like stained art-glass.

It was not long until wife had made and put down neat, and what I thought beautiful, rag-carpets, and hung dreamy lace window curtains; and a year or so later, having to visit St. Louis in an effort to effect a compromise settlement for a failing Tennessee River merchant (for it was during the aftermath of the panic of 1873), I purchased a "parlor carpet"—a "three-ply turkey" (the old ladies will know what I mean)—which I brought home in my valise, and put down over a cushion of oat-straw.

Of course, in due time, followed neat painted fences, gravel walks and drives, shrubbery and flowers; vigorous young oaks were all about us, which were trimmed and trained and soon became beautiful shade trees.

It is true I had help in the heavy parts of the house construction, that one man could not do alone.

I had two fine old carpenters, Dan Hurst and John Black, to aid me in placing the sills and raising the plates, joists and rafters; and I never shall forget how astonished they were that I could lay off and mark, on the ground, and cut to fit in its place each piece of timber, and especially the "short-rafters," extending from the corner ridge-poles to the plates, which had to be of varying lengths and the upper ends cut at a compound angle so as to fit against the corner ridge-poles, ready to be toe-nailed. They could not understand how I could set a lot of bevel-squares and with them mark the angles and cut these irregular rafters the proper lengths and make them fit exactly when put in place—a thing they had always had to do by putting the scantling in its place and there marking it with a pencil.

This house had no supports, even at the corners, other than the "boxing" which formed its shell, nor any other bracing; and yet it was wholly free from vibration. We lived in it about eleven years, and sold it in 1884 or 1885 for approximately as much as it had cost. And it is still standing, intact, or was the last time I saw it, a year or so ago, after the lapse of about 56 years.

But again, I am constrained to ask myself, Who can possibly be interested in these frivolous personal details? Except as they tend to illustrate the simple and comparatively primitive life of those early days, they must be tediously irksome to the general reader. To me, they are cherished memories, and the kind reader will not be offended, I hope, if while I am trying to interest and amuse him I momentarily turn aside to please myself. The pleasant recollections associated with that old home, the first

of my own and of my manhood life, from which I went so often and to which I so often returned, in my early struggles as a lawyer—the bright smiles and loving caresses of devoted wife and idolizing little ones which greeted me when I came—the unsimulated anxiety upon their eager faces as they impatiently waited and watched for my coming, and the radiant joy that sparkled in their eyes as they ran with outstretched arms into my embrace—those are scenes that, though I should live a thousand years, I could never forget. As I dwell upon them, how vividly comes into my thoughts that beautiful exclamation of the poet—

"How sweet to hear the watch-dog's honest bark
Bay deep-mouthed welcome as we draw near home!
How sweet to know there is an eye will mark
Our coming, and look brighter when we come!"

And though these many goings not unnaturally irked the good wife, despite all her patience, left alone with the kiddies for many days, and sometimes for weeks, at a time, and when I could make no promise as to my return except to say that when I did come, which would be as soon as I could, I would come sober—I could only urge the necessity of the case, and console her with the words of mother Eve to her spouse as she sought to meet his protest against her working in the garden alone, when she pleaded with him (according to Milton) that—

"Solitude is sometimes best society,
And short retirement urges sweet return."

XXXIII

Wayne County, Author's Nativity—Characteristics and People—Robert P. Cypert, Incident of his Making Two Witnesses out of One—John F. Montague—Poets and Authors—Comments on Frank Boyd's "Out Here in the Hills."

I HAVE heretofore referred to certain peculiarities of the counties comprising the old Ninth Chancery Division and Eleventh Judicial Circuit, and have related some of these peculiarites of McNairy and Hardin Counties. Much might be said along the same lines of the other counties in these divisions, but I shall not pursue the subject further than to dwell briefly on Wayne County.

On the morning of June 3, 1849, on the east bank of Green River two miles below Waynesboro, in Wayne County, I first saw the light of day. And although I have not lived in that county since 1851, much of my life has been spent within its borders; my first school days in 1856–7, at Old Sorby, attending the blab-school to which I heretofore referred; the year 1858 at Waynesboro, in attendance at the Male Academy, taught by Professor Williams, a fine young man who later committed suicide; 1859–60 and 1866–69 at Clifton, either attending or teaching in Clifton Mason Academy. I courted and married my wife in that county, tried my first case there, practiced regularly in its courts for more than fifteen years, organized its first bank of which

I was president for nearly twenty years, and have kept in close touch with its people all my life.

I recall many incidents of my boyhood year at school at Waynesboro, among them the fact that, with other boys, I went "in swimming" at the foot of a certain large elm tree on Green River fourteen times in one day—beat that if you can. Jim Riley must have known of this "Old Swimmin' Hole" when he wrote his poem about it.

Wayne was a poor county, comparatively, both in wealth and population, it was much isolated and cut off from the outside world, having no railroads, telegraph lines, or other means of rapid transit or communication—much of the time without even daily mails. True its corner touched the Tennessee River, and it had access to the steamboats plying that stream, but these were few and irregular, though they were the sole means of outlet for its produce and of inlet for its supplies and merchandise from abroad. Its terrain was not especially attractive; much of its surface was flat and barren, its fertile lands confined to the narrow valleys of its streams, of which, however, there were quite a number, and these valleys were very beautiful and productive. Its supply of schools was meager, and its people as a class were regarded as backward—"backwoodsy" in fact, especially in the eastern and southern portions, remotest from the Tennessee River. It produced no human prodigies. "Far from the madding crowd," its people kept to "the even tenor of their way," pursuing "their useful toil, their homely joys, their destiny obscure."

I speak not, let it be understood, of the people of Wayne County now, but of those of the early days; they are now, indeed, as up-to-date as any. As

illustrating their backwardness as late as the early post-war days of the late sixties and early seventies, it was told me, how truly I cannot say, that a prominent south-county farmer, a mason, having as a delegate of his lodge attended the Grand Lodge at Nashville in the summer time, and reported on his return that they had ice on the table every meal at his hotel or boarding house, "made right thar in the city," charges were preferred against him by his church and he was expelled for "lying." Imagine, if you can, what would have happened to him had he reported the numerous common-place conveniences of today.

Many amusing things happened at Waynesboro during my long attendance upon its courts. Some of them have already been related in these reminiscences; there were many more than I can afford to relate here. Only a few must suffice.

One of the noted "characters" of the Waynesboro bar was Robert P. Cypert. Everybody called him "Bob." He was a truly remarkable man, native to the soil. Spare, low of stature, blond, stoop-shouldered, slow-motioned, humorous, careless of his person—and everything else,—lazy, but of brilliant mind. He wrote much for the local county papers, in parables, using the quaint style of Bible writers —his language hardly distinguishable from that of the prophets and the New Testament writers. He was a good routine office lawyer, but not much of a trial advocate—wrote a good pleading but made a poor speech. He was very deliberate, and his habit, when trying a case or examining a witness, was to walk slowly back and forth in the open space in front of the jury, or court, looking down at the floor, and rarely looking up, even at the witness or

jury. A large part of his practice was in divorce cases.

One day Bob was trying a negro divorce case before Judge Bateman, an ex parte case, in which there was no defense. He read his bill and order pro confesso, and was told to proceed with his proof. He called out a name, and a negro man came forth from the crowd in the court room, was sworn by the clerk, and took the witness chair immediately in front of and rather under the Judge's stand where the Judge could not see his face without leaning forward over the bench. Bob examined him at considerable length, and stood him aside. Thereupon ensued some colloquial discussion between Bob and the judge with the result that the judge thought the testimony of this one witness insufficient, and asked Bob if he had any other witnesses, and if so, to call them around. Bob called out another name, and a negro man walked around from the crowd, was sworn and took the witness chair. Bob proceeded to question him, as he had the first witness, all the while walking slowly back and forth and looking down at the floor. This had been going on for some ten or fifteen minutes, when some of the lawyers looking on observed that the negro's big-toe protruded through a hole in his shoe precisely as had the big-toe of the first witness, and, observing more closely, they discovered that various parts of his ragged dress were precisely like those of the first witness; they suspected, and finally became convinced, that this second witness was the same negro as the first, and began to giggle, nodding and pointing at the negro; meantime Bob was steadily going on with his examination, unmindful of the swelling hilarity. Finally the judge's attention was

attracted to the matter; he leaned forward and after looking the negro over carefully, asked him, "Aren't you the same negro that testified in this case a few moments ago?"

The negro said, "Yassur, I is."

"Well, you can stand aside," said the judge, and, turning to Bob, he said, "Mr. Cypert, what does this mean—your making two witnesses out of one?"

Bob was much surprised, apologized, disclaimed any intention or purpose to deceive the Court (and was evidently perfectly sincere), and wound up with the witty excuse that "all coons look alike to me." It turned out that Bob really had another witness, the ludicrous incident having arisen from a confusion of names by the negro. This other witness was called and Bob got his decree for divorce. No one suspected him of having intentionally practiced this joke on the Court.

Bob was honest and well-meaning, always, but many breaks of this kind were credited to his absent-mindedness.

Another "character" of the Waynesboro bar was a relative of mine, of whom, though long since dead, I may speak freely, for I can do so without violating the old maxim, "de mortuus nil nisi bonum." He was John F. Montague, a distant cousin of mine. John was an impetuous fellow, ardent, headstrong, impatient of opposition, optimistic and very self-confident. He wrote a very straggling hand, but rapidly—was one of those fellows whose pen outruns his brain. For example, in drawing a bill attacking a deed by an old gentleman, John Dixon, to his wife, Mary Dixon, my client, after exhausting the catalogue of mental defects of the old man, John added, "and moreover, the complainants

charge that the said John Dixon was, at the time of the making of said deed and had been for many years prior thereto, a very old man, to-wit, eighty years of age." I had much fun out of John, reading this clause at him and twitting him with the compliment of having discovered the only man since Joshua of old who could command the sun and moon to stand still and be obeyed.

Another funny thing happened a few years after John came to the bar. Bob Haggard, now very deservedly known as Hon. R. A. Haggard, came to the bar a year or two after John. Bob was a very sprightly youngster, quite as aggressive and self-confident as John, if not more so. One day, after they had had a bout before a Justice of the peace in a case in which Bob had "cleaned up" John and won the decision, John came away in great disgust, remarking to a friend, "That fellow Bob Haggard reminds me of a young wasp—bigger when he is first born than ever afterwards"—a figure which every boy who has fished with young wasps as bait will fully appreciate.

But John was mistaken. Bob Haggard has grown, and grown immensely since those days, until he has become, and has long been, one of the leading, best and ablest lawyers in this section of the state, honored and esteemed by all who know him.

John Montague moved with his family some forty years or more ago from his large farm on Green River opposite the place of my birth, to Giles County, where he purchased a valuable farm near Pulaski, and where he devoted the latter years of his life to farming, giving little attention to the law. While he lived in Giles County he was sent to the state senate from that county, and many persons

of Nashville, doubtless, remember him as the tall, dignified senator from Giles, in the long black Prince Albert coat and "bee-gum" silk hat.

Although it is not my purpose in these reminiscences to write of the living, I cannot leave Wayne County without a brief reference to three living persons who have recently attained local celebrity as authors and poets, Tom Stribling and Charles S. Ricketts of Clifton and General Frank Boyd of Waynesboro. Charles S. Ricketts, poet, is my brother-in-law, and a sense of delicacy restrains me from commenting on his works, further than to note the titles, which are: "The Traveling Salesman, the Ideal Girl, and Other Poems," and "When the Big Show Comes to Town," "Proud Tennessee, and Other Poems." Mr. Stribling, the son of an old friend, C. C. Stribling, has written several works of fiction which have become well nigh "best sellers."

Gen. Boyd, is simply my friend, whom I have known since he was a small, bare-footed boy; and I therefore feel free and shall take the liberty to speak my mind briefly concerning the merits of his most excellent work. His principal volume, published last year, 1929, is entitled "Out Here in the Hills" —a book of 190 pages, containing some 144 poems, mostly short ones. As its title indicates, it is devoted chiefly to the description of rural scenes and rural life and customs, and to the vindication of the "common people" and their homely honesty, morality and patriotism—chaste and elevating in every line. I know of no work of light literature that is more charming, wholesome, and appropriate for the family library.

Four nations have each given to the world classic poems on the "Common People"—England, Thomas

Gray's "Elegy," Ireland, Oliver Goldsmith's "Deserted Village," Scotland, Robert Burns' "Cotter's Saturday Night," and America, Henry W. Longfellow's "Village Blacksmith." All are written in the same vein, and with the same purpose—extolling the "bold peasantry," the "rude forefathers," and all expressing, in different forms, the wholesome admonition of the Elegy:

"Let not ambition mock their useful toil,
Their homely joys, their destiny obscure;
Nor grandeur hear, with a disdainful smile,
The short and simple annals of the poor."

Frank Boyd's master-piece is a worthy companion of these great poems. It is entitled "The Cropper," of 35 stanzas, of four lines each, and every stanza a gem. It describes, with unsurpassed beauty, simplicity and fidelity, the small country farmer's humble cabin home, on the bank of a limpid stream, not "hid in a nest of roses" like the "cozy little cot" of Riley's old sweetheart dream, but in the "moonvine's tangled woof," where:

"A straggling woodbine clings above the door;
Close by the dahlia lifts its graceful form,
While hollyhocks and daisies by the score
Stand glittering in the dews of early morn."

where:

"The mocking bird in younder maple sings,
The cock's loud crow is echoed from the hill,
The turkey gobbler thunders with his wings,
And guinea hens shout 'potracks' loud and shrill;"

where:

"Beneath those redbuds, crowned with scarlet
blooms,
A bubbling spring leaps upward through the
sand,
And swaying dogwoods wave their snow-white
plumes,
While bluebells venture near in straggling
bands."

And then, through half a dozen such beautiful pictures, we are brought to:

"The cropper's home! A cabin near the creek,
His fortress, citadel, and daily shrine,
From whence he goes at morn his bread to seek,
Returning with the evening sun's decline."

And so, the poem carries us through the cropper's daily toil, his return, singing, to his frugal meal at night with his idolized wife and child, his reading of "The Holy Book, the poor man's dearest friend, his mother's solace in the years gone by," his humble evening prayer, and finally to his "tick of straw upon the old post bed."

As I have said, each verse is a gem of beauty in both thought and expression. There is no display, no pedantry, no striving after effects, just a plain and simple portraiture, in words that ring with music, of scenes and surroundings familiar to every denizen of the forest and farm, and of feelings common to every humble and contrite heart.

There are many, very many, other poems in the book of almost equal merit. If the book had come from the pen of a well known author, it would undoubtedly be a "Best Seller."

XXXIV

The Notable Case of the Reverend George Frederic Burgoyne Howard.

ONE of the most unique characters I have known was involved in a "cause celebre" with which I was connected while residing at Jackson in the eighties, who boasted of the grandiloquent name of George Frederic Burgoyne Howard.

Mr. Howard was, when I went to Jackson in 1884, a Baptist minister and pastor of the leading Baptist Church of that place. He was a most distinguished looking man, of medium height, full fleshed but well proportioned, a blond, with long flowing beard and hair of almost a dove color, and as fine as silk, clear and full gray-blue eyes, and a skin as fine textured and rosy as a schoolgirl's. He dressed in the height of fashion and with the best of taste, always wore gloves and a tall silk hat, and walked with the swagger and rock of a sailor, as resilient and elastic as if he were on springs.

He had a splendid voice, which was highly cultivated—sang like a canary, played the piano well, was a delightful conversationalist, well up in all the fine arts, and in history and literature, and especially the classics. In the pulpit, he was eloquent, in a certain sense, that is, his flow of words was smooth, constant and unremitting, though lacking in brilliant thoughts or ideas—his affliction being, as some

one has expressed it, that of a "diarrhea of words and a constipation of ideas"—yet nevertheless he had a command of dignified, pure English not surpassed by a Milton or Macauley.

His intercourse gave the impression of the highest culture, and seemed to conclusively negative the idea that he could have sprung from a plebeian source.

He claimed to be an Englishman of the upper class, born and raised in London, and boasted of the fact that his mother was a sister or other close relation of General Burgoyne, of revolutionary fame, for whom he was named, and his familiarity with London and its history and with famous Englishmen lent great plausibility to his claim.

He was quite egotistical, of a critical and combative disposition—criticized prominent members of his congregation for the most trivial foibles; for example, for cutting butter with their knife instead of the butter-knife, drinking coffee with the spoon in the cup, etc., and seemed utterly to ignore the wise old saying that those who live in glass houses should not throw stones; and by these means he incurred the bitter animosity of several of the leading members of his church who, suspecting that he was an imposter, instituted a searching examination into his past life.

The result of this examination was, that they finally published, over their signatures, in the leading Baptist paper of the State—the Baptist and Reflector, as I recall—a lengthy article, "showing him up" unmercifully.

This article was grossly libelous, if untrue. It created a great sensation, and much indignation among the partisan friends of the "Doctor"—for

he was then known as the "Reverend Doctor Howard"—and these partisan friends were numerous.

In substance, the article charged: That his name was not Howard, at all; that his assumption of that name, and of relationship to General Burgoyne, was a gross fraud, as was his claim to membership in the English aristocracy; that his real name was "Fred Howlett"; that he was the son of an obscure London policeman; had been bred in poverty and obscurity, and educated only in the parish schools; that he had run away from home when a boy in his 'teens and enlisted as a common sailor on a merchant ship, as "Fred Howlett"—and they produced a photostatic copy of his enlistment, in his handwriting which was indisputably genuine; and that upon his landing in America some year or so later he had gone to Georgia, where he had led a wild and checkered career, embracing a long and lecherous liason with a lewd woman, and that only when driven from that state had he "taken up the ministry" under the name of George Frederic Burgoyne Howard.

This publication I state only from memory, and may be mistaken in some of its details. My good old friend, Dr. G. C. Savage, now of Nashville, who is familiar with the facts, will I am sure confirm the substance of what I have stated.

Upon the appearance of this publication, Dr. Howard came to my firm, of Pitts and Hays, in high dudgeon, to bring for him a suit for libel, declaring the whole publication a tissue of falsehoods, except as to the fact that he had enlisted as a seaman in the name of "Fred Howlett," which he explained by saying that, partly as a boyish freak and partly to conceal his identity from his parents, he

had, just before enlisting, "swapped names" with a boy friend of that name, but which name he had discarded immediately upon landing in America.

After several days of conference and investigation, becoming convinced that "Dr. Howard" was sincere and truthful—and no one could come in contact with him even for a brief period without being impressed by him—we brought the suit against the authors and publishers of the "libel" for fifty thousand dollars.

As we expected, the defendants pleaded "justification"—that the article was true in every particular; and that was the issue.

Several depositions were taken by the defendants, in Georgia and elsewhere, tending to establish their defense, including that of the lewd woman of that state; but most of which evidence our client claimed was fabricated—all the time asseverating that he would clear up everything by his friends and acquaintances in London.

Finally the time came for taking our proof in London, which we planned to do by interrogatories, to be first written out and filed in court, for inspection and "crossing" by opposite counsel, and then to be followed up by the Doctor and one of us, to be present in person when the witnesses gave their testimony.

The Doctor accordingly gave us the names of numerous witnesses, with their occupations and places of residence in London, and we spent several days in conference with the Doctor, framing the most elaborate questions.

As the time approached for taking the depositions, the Doctor suggested that he go to London, in advance, for the purpose of corralling the witnesses

and seeing to it that they should all be accessible when we should arrive later. He accordingly left for London, and after he had been there a week or so he cabled us that it was not necessary for either of us to come—that everything was all right, and he could take the depositions himself, or rather, had arranged with a notary friend to take them, without the trouble and expense of our trip.

In due time the Doctor returned, and soon afterwards the depostions came, in most perfect form, and covering the case fully, but in a hand-writing much resembling the Doctor's, although they bore, apparently, the proper and genuine signatures and seals of the notary, and genuine London postage and post-mark.

The defendants at once filed elaborate exceptions to the depositions, supported by affidavits exhibiting numerous cablegrams and other communications from lawyers and officials in London, to the effect that there were no such persons as those named in the interrogatories and depositions, at the places therein named, and had never been, and boldly challenging the whole batch of depositions as rank forgeries.

For the first time, our confidence in our client was shaken. We began ourselves to suspect that he was not what he professed to be; and we frankly told him that unless the matter was cleared up and put beyond doubt or question by another trip to London on which we should, one of us, accompany him, and a confronting of opposing counsel by these witnesses face to face, we could not afford longer to remain in his case. Apparently with much regret, he said he was not able to bear the expense. We offered to bear our own expenses, but he made

some other excuse, and we saw from his attitude, brazen and plausible as it was, that he was an imposter, and at once retired from the case and so notified the court.

He employed other counsel and continued the fight through a trial, after I left Jackson, as I was informed, at which trial he relied chiefly on his own testimony, and himself made a lengthy and the principal argument, said to have been a very brilliant one; but he lost the case.

Soon afterwards he abandoned his wife, whom he had married at Jackson—a beautiful and accomplished lady—and left for parts unknown.

I was afterwards informed that he was subsequently indicted and convicted, in a nothern state, for fraudulent use of the mails; and once since I came to Nashville, perhaps 30 or 35 years ago, I saw him on the street, looking grand, as usual, and wearing a fine overcoat, fur-lined on both sides, that must have cost not less than several hundred dollars, and a fine silk hat, but I had no conversation with him. What ultimately became of him I do not know.

As I have said, Mr. Howard—or Howlett, whatever his real name—was one of the most unique characters I have ever known. His life, if truly written, would, no doubt, be a most thrilling romance. It is hard to imagine that one man could fill the varied and incongruous rolls attributed to him with apparent truth; that one born in poverty and obscurity, and reared in the slums of London until practically a grown man, and then embarking on a sea-faring life and gliding thence into a wild and capricious career, could attain to that status of elegance, cultivation and refinement which he un-

doubtedly occupied, is hard to believe. He is not at all to be accounted for by our Andrew Jacksons, Abraham Lincolns and Alfred E. Smiths, for reasons that will occur to every reflecting mind. That truth is stranger than fiction, however, has long been established, and because we cannot imagine or conceive of such a thing is no reason why it should not be so.

That he was, in some sense, a "freak of nature" I have long believed. My intimate association with him during the pendency of the case to which I have referred brought to my knowledge and attention certain defects, or abnormalities rather, of his physical person not known, perhaps, to his general acquaintances. For example, while his body and his facial and cranial appearances were elegant, indeed handsome, his feet were large, knotty and unshapely, his hands coarse and stubbed, and otherwise "ugly"—and this was why he habitually wore gloves—and his teeth abnormal and deformed, and for this reason, no doubt, he always wore a full beard which well covered his mouth, even when laughing. He was a gourmand at the table, and his animal passions were, to use a mild term, strong. His brain was undoubtedly large, but freakish—it would require a far more expert phrenologist than I to describe its qualities. It is certain that, when I knew him as a young man, not over 35 apparently, his graceful carriage, elegant manners, pure diction, breadth of information apparently on all subjects, interesting and entertaining conversational powers, his musical training, and his freedom from all signs or vestiges of a vulgar or plebeian origin, would have accredited him in the most élite and refined company. These latter qualities

were at first convincing to me of the truth of his pretentions, and even now, in view of them, I cannot banish from my mind a lingering doubt but that there might, at last, have been some truth in his claims. All in all, he was the greatest human enigma that I have ever known.

Note: Since preparation and publication of above reminiscence, I am informed by a friend at Jackson, Tenn., that the indictment and conviction of "Dr. Howard" for fraudulent use of the mails, occurred in the Federal Court at that place, where he was convicted on a second trial, after one or more witnesses had been brought over from London and Scotland Yard.

XXXV

Interesting Cases—Important Facts About Trees—Perry County Case, Blocking Sugar Maple—Seventy-three Year Old Line Identified by Blocking—The Poplar Sprout and Bark Case.

BEFORE coming back, as I purpose to do later, to recollections of and reflections upon some of the later Supreme Court and other judges whom I have known and who have passed away, it may not be amiss to advert to some of my experiences and observations "in court," and to some "cases," that may possibly be of interest to the reader—if in no other sense, perhaps as echoes and legends of the past.

From my earliest experience at the bar, I provided myself with a set of surveyor's instruments —compass, chain and "Jacob-staff"; and I have these old instruments now (except the Jacob-staff) in a drawer in my office, though I have not used them for more than forty years. It was my custom, when I had a case involving a disputed boundary line, to go myself upon the ground and make a survey—and I was often able to solve the difficulty by this course. I had done considerable surveying in my younger days, been much in the woods and become familiar with certain facts about timber, trees and vegetation generally—things not technical or scientific, but things commonly known to experienced woodsmen and not generally known by

the ordinary man. For example, the fact that trees, and all plants as well, grow in altitude only "out of the bud," so that the point where a limb comes out of the body of a tree, or plant of any kind, never gets any higher from the ground; this accounts for the fact that when a surveyor makes a land mark on the side of a tree, that mark never rises any higher from the ground than when made, though it be a hundred years old or more.

And for another example, the fact that trees—the bodies of them—grow in size, or expand laterally, only by the formation of a new ring of wood just under the bark each year; and this accounts for what is called the "grain" in woods. These "grains" are more distinctly marked in some woods than in others, very distinct in most of the hardwoods, such as oak, hickory, ash, walnut, locust, etc., and less distinct in most of the soft woods, such as poplar, gum, etc. Moreover, it enables one to tell the age of a tree by counting the rings from the heart to the bark.

And for still another example, the fact that on a tree, as on the human body, a cut in the wood, like a cut into our flesh, will heal over, form new bark or skin, and ultimately efface all vestige or sign of the wound.

And for yet another example, the fact that the outside, dead bark of a tree is not renewed annually, but remains the same indefinitely, until worn off by the weather.

These two latter facts account for the consequence that an old tree is better than a young tree for a durable land mark; that if a young tree is marked and the hack made through the bark into

the wood, it will form a scar, heal over, and ultimately efface all exterior sign of the mark.

Knowledge of these facts, gained not from books, but from observation and contact with the woods, has been of great service to me on many occasions, and enabled me to call nature as a witness to facts which could not be otherwise proven. I will give a few illustrations.

More than fifty years ago I had a lawsuit for a farmer of Perry county with his neighbor, involving a disputed boundary line. Their farms were in the rich river bottom of Buffalo River. The crucial question was the location of a certain corner, described in the title papers as a sugar maple. There was quite a grove of large sugar maples in the vicinity of where the corner should be, but none of them bore the slightest sign of a mark. The corner mark, well understood by all surveyors, consisted of three surveyor's hacks, one above the other, on the two sides of the tree in the directions from which the intersecting lines approached. The lines had been run and marked many years before—they were very old lines, and the approaching line trees were few and inconsistent, some of the marks on them obviously spurious. The certain location of the corner tree would solve all these difficulties. The surveyor of one of the litigants would locate the corner on one sugar maple, and the surveyor of the other litigant would locate it on another, and each be very confident, and on plausible grounds, that he was correct. It was uncertain, in this status of the case, how the jury would decide.

It occurred to me that, as the corner tree was a comparatively young tree when marked, the surveyor had probably, in hacking it, cut through the

bark into the wood, and if so, that the blackened mark of the blade was still in the body of the tree, covered over with both new wood and new bark. So, to test out this surmise, I took my surveyor's instruments and went upon the ground to ascertain as best I could which tree was most likely the real corner tree. Having done this, I caused a section of that tree to be blocked out, by chopping in above and below the space where the marks should have been made and splitting off with iron wedges the section or slab which should contain the marks if they were there. This slab was of the thickness of a little more than one-third the thickness or diameter of the tree. I then split the slab, in the center, from the bark towards the heart, and fortunately, as I hoped and expected, there were the three blackened marks of the hatchet, as plain as they were the day they were made, several inches inside the body of the tree. No one could doubt they were the original surveyor's marks indicating that tree as the corner; and, of course, it was so determined. Nature was a witness that no human voice could dispute.

I had never heard, at that time, of blocking a tree to find a land mark; but since then the practice has become quite common, and it may have been done before, in other sections, but if so, I had never heard of it.

Another case of a somewhat similar character was tried in the Federal Court at Nashville some thirty years ago or more, in which I was not directly engaged. In that case, which was an action of ejectment removed to the Federal Court from some one of the mountain counties, the issue was as to which of several well marked lines was the true line, that

is, the line run and marked by the surveyor making the original survey on which the grant was based. This original survey had been made seventy-three years, as I recall, before the year of the trial. All the lines were old, and there had been much dispute about their ages, and otherwise, so that the case was "up in the air" as to which was the true line.

Finally one of the parties concluded to "block" a large white oak tree that stood so near the line he claimed that it ought to have been marked as a "side-liner," but which bore no sign of any mark at all. This was done, and the marks found, far within the body of the tree; and by counting the rings between these marks and the bark, they were found to be exactly seventy-three (if that was the age of the mark as I recall it was), thus demonstrating beyond question that that was the true line. Another case where Dame Nature took the stand and set all other witnesses aside.

One other case I will mention of an analogous, though not exactly similar character. It arose in Hardin County more than fifty years ago, but never came to trial, for reasons I will explain.

Mr. Hugh L. Yancey, a prominent citizen of Giles County, who had represented that county in the Legislature, moved to Hardin County and purchased a valuable tract of land on the west side of the Tennessee River, adjoining the farm of Burrell Hughes, one of the largest farmers of the west side of the county. The two tracts of land lay on a creek, a few miles out from the Tennessee River. The land was very rich, but soggy, and not tillable without drainage. Yancey's land was mostly in the woods. Hughes had cleared up his land some years before, and, to drain it, had cut a large open ditch,

called a "leader," from the hill out through the bottom to the creek. This large ditch ran north and south along Hughes' west boundary line, and entered the creek, at the north, at the foot of a long high ridge running up the creek, to the west, on Yancey's land, and cutting it off from all drainage access to the creek.

Desiring to clear up his bottom land lying behind this ridge, Yancey applied to Hughes for permission to run his drains into Hughes' ditch. "No, sir!" said Hughes, "that ditch is on my land and for my use only; you can't drain a drop of water into it."

This was quite unneighborly, and Yancey was puzzled as to what to do. His valuable land was worthless for cultivation unless he could drain it, and his only outlet was Hughes' "leader." Hughes was stubborn and immovable. Yancey thought Hughes might be mistaken about this big ditch being on his land; and so, he employed a surveyor to locate the lines, with the result that he found the ditch on Yancey's side of the line. When Hughes found this out, he employed another surveyor, who located the big ditch on Hughes' side of the line; and thus the breach became an open and angry one.

At this stage of the matter Yancey came to me. From his statement, the question of boundary seemed an uncertain one; and, according to my custom in such cases, I suggested that I go down and examine the ground for myself, before advising what to do. So I set a day, and Mr. Yancey arranged for the necessary helpers—chain-carriers and line-blazers—and I carried along my surveyor's instruments. According to the title papers, Yancey's land cornered in Hughes' west boundary line some hundred rods or more back south from the creek, on a

large poplar, marked as a corner, in Hughes' west boundary line, and ran thence north with Hughes' line; but no such corner tree was there, nor any marked trees on that line. I ran the lines of Yancey's land, finding the other corners and lines, but no vestige of a mark on the Hughes line between the two tracts. I carefully ran Yancey's south boundary line, to the point where it struck the big ditch, and came to the conclusion, from a close study of the pollage and the whole situation, that the large poplar corner had stood on the east bank of the ditch, throwing the ditch on Yancey's land; but no sign of such a tree could be seen, and the dump on the east side of the ditch was covered with a jungle of bushes and briars extending fifty feet or more out into Hughes' field, and this dump was inaccessible from the ditch on account of the water and precipitous high bank. So I had our negro helpers get some briar-hooks and axes and cut a narrow pathway from Hughes' field in to the top of that dump at the point where my compass indicated that poplar corner had stood. Getting in to that point, I found a poplar sprout about the size of my finger growing up out of the dump, and I had the negroes clear off a place about six feet square and dig down.

Knowing the longevity of the old, matured bark of a tree, I believed even better evidence could be found near the base of that dump; and so, sure enough, as we neared the natural surface of the ground, we began to find well preserved poplar bark, in a circle the size of a large stump; and we continued to find it to our heart's content. We gathered up a meal sack full of this bark, which I brought back to my office and carefully preserved.

And I at once brought my action of ejectment for Yancey.

It happened that Hughes did not find out what we had done until after he was sued. He then saw the signs we had left, and rushed to my office, in high dudgeon, to inquire about it, and, no doubt, to "curse me out." I treated him courteously, upbraided him for his unneighborly treatment of Yancey, and showed him my "bag of bark"—with the result that he "came down off his high horse," and signed an agreement to admit freely Yancey's drains to the "big ditch," in short, that it should thereafter be used jointly by them and "their heirs forever."

And so that was the end of what might otherwise have been a long-drawn-out and bitter lawsuit—nature again coming to the rescue of justice with her indisputable testimony.

XXXVI

Perry County—Characteristics and Notable Citizens—J. Pink Ledbetter—Judge James W. Doherty—William S. Maxwell—Ludicrous Controversy over Meaning of Quia Timet.

BEFORE finally leaving the "peculiarities" of the counties comprising the old Ninth Chancery Division and Eleventh Judicial Circuit of Tennessee, I must add a word about Perry County. This county, in the days of which I write, was a "back-woods" county. It had no railroads, factories, banks, newspapers, daily mails, or educational institutions other than the common schools. Its chief products were corn and peanuts—and, a little later, saw logs from the woods rafted down the river and rough lumber from the saw-mills; and yet it had, like McNairy County, quite a large number of the finest kind of citizens—intelligent, honorable and prosperous. Such names as John L. Webb, William O. Britt, Thomas W. Edwards, Thomas M. Brashear, Andy Cude, Egbert Shepherd, Charles L. Pearson, Robert Houssels, Sam Young, and many others, come into my mind, representing a class of men that for intelligence and all-round good citizenship will compare favorably with, I dare say, any class of equal number to be found in any rural county of the state today.

It had its peculiar "characters" too, as well as a peculiar terrain, or surface. Washed on its west-

ern border by the Tennessee River, and centrally bisected, north and south, by Buffalo River, paralleling the Tennessee, with numerous small tributaries entering these streams from both the east and the west, it could boast not only of the rich bottom lands of these two large streams, but of perhaps more fertile small valleys than any other county in the state. It was mainly in the gravelly bottoms along these small streams that the peanut luxuriated, making Perry the banner peanut county of the state, if not indeed of the United States. Peanuts sometimes brought more than two dollars per bushel, of 23 pounds, and in such years, Perry was in clover. Fortunes were made in raising and dealing in them.

Of its peculiar "characters," of whom there were many, I will mention only a few, who were members of the bar. The most peculiar one, perhaps, was J. Pink Ledbetter. Mr. Ledbetter had been, in early life, first a farmer, then a school teacher, and finally he turned lawyer. He was, when I knew him, of Falstaffian shape and size, and equally of Falstaffian gullibility—as simple, credulous, unsophisticated, excitable and petulant as a child. His "antics," especially when under excitement, were ludicrously amusing. His motions were always quick and nervous. His whole head, it was said, was as guiltless of hair and as slick as a peeled onion—I never saw it, for he kept it covered with a wig, an old brown wig, from which the hair around the edges was worn off, exposing the "skin" of the wig next to his skull. He wore, usually, a short sack coat, in the left side pocket of which he carried all his court papers and many others, with two or three memorandum books and other trinkets, that so weighted

and pulled down that side of his coat that it brought his left sleeve down over his hand and drew up his right sleeve nearly to his elbow. His shoes were never shined, and rarely tied, and he wore a broad-brimmed slouch hat, and changed his shirt only once a week; so that, in personal appearance, he was anything but a dandy or a dignified country gentleman. I should say also, that he wore no beard, but shaved his whole broad, fat face promptly every week or ten days.

Pink was nevertheless a jolly good fellow—so jolly and good-natured that he allowed us youngsters to call him "Pink"—always full of wit and good humor, and he never resented the boys laughing at him. His practice, like that of Bob Cypert of Wayne County, was chiefly in simple divorce cases, of which he had a string almost every term of court. He could make a witty speech, and had a store of anecdotes with which he often turned the point of his adversary. For example, we were engaged in a canvass of the county for a railroad subscription, and Pink was for the subscription. At one of the speaking places where Pink was making a speech for the railroad, a man in the crowd kept firing objections at him which he for a time answered courteously, but the fellow persisted until Pink got out of patience and retorted that the man was "seeing ghosts"—things that did not exist. "My friend," said Pink, "you remind me of a thing that happened the other day in Buffalo River bottom. Two men were out hunting in the tall timber, each with a double-barrelled shot gun. Suddenly, one of them, looking up into the top of a tree, raised his gun and fired, first one barrel and then the other, and then, still gazing into the tree-top, reached out for the other's

gun, and fired both barrels of that at the same object. Nothing fell, and his companion, after striving in vain to see what he was shooting at, asked him, 'Why, Bill, what the hell are you shootin' at?'

" 'Why, I'm shootin' at that coon,—don't you see that coon lyin' up thar on that limb?'

" 'Naw,' said Tom, 'I don't see no coon, thar's no coon thar.' Then turning and looking into the face of Bill, Tom said, 'Ah, thar it is, it's a louse in your eyebrow.'

"What you see sir," said Pink, shaking his finger at his interrupter, "is just a louse in your eyebrow." The crowd roared with laughter, and the interrupter slunk away.

Pink had a chronic case of itching piles and a consequent habit of scratching, and his usual attitude when excitedly speaking was indescribably ludicrous, with one hand on top of his head holding his wig in place and the other busy in the rear.

Though affording his friends and acquaintances unlimited amusement, there was nothing mean or little about Pink Ledbetter. He was entirely harmless and everybody liked him.

Another peculiar character, who lived for a time in Perry County, was Judge James W. Doherty. Judge Doherty was a man of considerable culture, and had been one of the Brownlow Chancellors for a short time immediately succeeding the Civil War. He had married a Miss Choate, living near Clifton in Wayne County, but had been long divorced from her, and never married again. He was a fine looking man, tall and well proportioned, with a long, flowing black beard, until it ripened into gray, which he wore all over his face, except the upper lip and the upper sides of his face, which he shaved. He

was a very garrulous fellow, talked a great deal without saying much, was "hail fellow well met" with everybody, had a keen sense of humor, and was almost as good a story teller as Judge East of Nashville. He was extremely bald-headed and, like Pink Ledbetter, wore a wig that was much worn and faded.

Judge Doherty had a good practice, but was not what might be called a successful practitioner. His real defect was a sort of "cacoethes loquendi et scribendi"—talking and writing too much. He could talk or write for hours and never make a point. He was not a student, and had no law library worth mentioning. I well remember my first contact with him as a lawyer, which was in Perry County. He had filed a bill for one Pete Sheffield against the widow and children of one Smith, some of them minors, seeking to set up a lien on Smith's homestead for the satisfaction of a note Sheffield held on Smith for money loaned him with which he had paid for the land. The only ground upon which the lien was claimed was, that the money had gone into the purchase of the land. The bill had been answered by the adult defendants and a guardian ad litem appointed for the minors who had answered for them; elaborate proof had been taken and the case was ready for trial; the guardian ad litem had died, and, being a young lawyer in attendance with nothing to do, I was appointed guardian ad litem in his stead.

On the calling of the case and my appointment, the file was handed to me, and, seeing that it was a very large one, I asked the Court to pass the case until next morning, to afford me opportunity to examine it, and this request was granted.

Next morning I moved to dismiss the bill for want of equity upon its face, notwithstanding the answers and proof. Judge Doherty protested vigorously, but to no good; Judge Nixon ruled that he would entertain the motion—that such a motion, like a motion to adjourn in a deliberative body, was always "in order." The motion was argued, and Judge Doherty, seeing that the issue was going against him, asked leave to amend; and the next two or three days were occupied with Judge Doherty's "amendments," which were several times as long as his original bill. He rang all the verbal changes possible, and must have used up a quire or more of paper, writing and rewriting up the whole matter; but he could make nothing more of the case than a loan of money which had been invested by the borrower in land—that and nothing more.

The Chancellor sustained my motion and dismissed the bill and all of its amendments, without reading or hearing read a line of the voluminous proof. The case was appealed, but promptly affirmed.

That case was really my start in Perry County. I had several retainers before I left town. An old and experienced lawyer was representing the adult defendants, and had answered and defended on the merits without noticing or taking advantage of the real defect of the bill, left to be discovered, as the by-standers said, by a young stripling of a boy lawyer—and that defect or point was but the simple proposition that a loan of money gives no lien to the lender upon what the borrower buys with that money.

One other "character" of the Perry County bar I will mention, not because he was very "peculiar,"

for he was not; but because of an amusing incident which occurred in my presence in court at Linden between him and Col. N. N. Cox, to whom reference has been made more than once in these reminiscences, and which illustrates the importance of a lawyer having some knowledge of the Latin language from which so many of our legal terms and phrases are derived. I refer to General William S. Maxwell.

General Maxwell, when I knew him, was, I should say, about sixty years old; he had been District Attorney General and in that way acquired his title. He was a successful lawyer, and a very fine looking man, dressed gorgeously, wore the heaviest and finest gold "fob-chain" I ever saw, and carried himself with princely dignity. He was one of those cock-sure fellows that are always right, and never make a mistake, self-confident, and intolerant of opposition, and, moreover, inclined to ridicule his opponent.

Col. N. N. Cox, a very able and efficient advocate, of about the same age and experience as General Maxwell, had brought suit in the Circuit Court for a Miss Corbitt against one W. I. Pace, an old bachelor, for quite a large sum as damages for a breach of promise of marriage; and also an ancillary suit in equity enjoining Pace from conveying his property pending the suit at law.

Maxwell represented the defendant, and had made a motion to dismiss the bill in equity for the want of merit and because unknown to the forms of the court. The General was arguing this motion, and declaiming vociferously against the bill as a nondescript, a bastard, a waif without name or parentage. "What is it?" he stormed. "Who can name

it?'' Col. Cox was chuckling, with much amusement at the apparent ignorance of the General, and interrupted to say, softly and complacently, ''Why, if your Honor please, it's a bill *quia timet,* and I am surprised that the gentleman does not know it.'' The General exclaimed, ''Quiet! Quiet! Quiet what? Why, your Honor please, instead of a bill to quiet anything, it's a downright lawless disturber of the peace!'' Col. Cox interrupted again to say, ''Why, if your Honor please, the gentleman don't understand the meaning of the term. It's simply a bill brought 'in time.' ''

The Chancellor, Judge Nixon, was as innocent of any knowledge of Latin as were the counsel, and so, without a smile, he gravely permitted these learned doctors, like John G. Saxes' ''Six Blind Men of Industan'' who ''went down to see the elephant,'' to—

> ''Rail on in utter ignorance
> Of what each other mean,
> And prate about an elephant
> No one of them had seen.''

From the two sounds in the phrase, one thought it meant to ''quiet'' something, and the other thought that it meant something about ''time.'' The literal meaning, ''because he fears,'' was Greek to all of them.

XXXVII

Recollections of Governor-Senator Isham G. Harris—His Voluntary Defense of Fitzgerald—First Campaign for Senate—Story of Man in Capsized Boat—Epoch-making Speech on "Splitting the Rock."

HOW many readers of today have a personal recollection of the old "War Governor" of Tennessee, and later long time United States Senator, Isham G. Harris?—that grand old man who carried around with him through the South and preserved intact, from the perils and ravages of the war, the "School Fund" of the state, of more than half a million dollars, only to be squandered by the "carpet-bag" government of the state succeeding the Civil War.

My personal knowledge of Governor Harris began during his canvass for the Senate soon after the full restoration of the state's government to its people, upon the adoption of the Constitution of 1870. I heard his address at Waynesboro, and the impression he then made upon me is still vivid and distinct. I can see him now, in my mind's eye, as I look back to that day, as he stood, a veritable Nestor, conscious of his strength, and talked to the throng of people that surrounded him in the open-air space, calmly, deliberately, forcefully, earnestly, with an occasional sally of wit that kept his audience in the best of humor as he sledge-hammered the Republican party, of which a large majority of his

auditors were members. Tall, straight, of rather "boney" frame but sinuous and strong, with keen and penetrating black eyes, thin gray hair—not bald—and clean shaven face, except for a stiff and bushy mustache, and with modest and graceful gesticulations, he recounted his war adventures, his preservation of the "school fund" and its looting by the carpet-baggers and "radicals"—pausing occasionally to sip from a cup some dark colored fluid which he poured from a porcelain pitcher, and which many thought was wine, but which turned out to be plain coffee.

I remember one of his witty stories, by which he illustrated the cupidity of men—the length some people would go for a little money. It was of an incident which he said had occurred on the wharf at Memphis. During a flood in the Mississippi River, a small boat out in midstream capsized and spilled out the men in it, among them a red-headed man. There was a crowd on the wharf, and when the boat capsized an old gentleman in the crowd became much excited and began to wring his hands, beat his breast and cry out, "Save the red-headed man! For God's sake, save the red-headed man!" which he continued until one of the boats which had put out from the shore to the rescue, had pulled the red-headed man out of the water into safety, when he sank down upon a bench exhausted, with a vigorous, "Thank God, he's saved!"

A kindly policeman, the Governor said, approached the old gentleman and said:

"That red-headed man is your son, I suppose?"

"No, sir, he's no son of mine."

"He's your younger brother, then?"

"No, sir, he's no brother of mine."

"A near relative?"

"No, sir, he's no kin to me."

"O, I see," said the policeman, "he's just a dear friend?"

"No, sir, he's no friend of mine."

"Well," said the policeman, with rising disgust, "if the man is no kin to you and no friend of yours, why in hades are you making such a fuss about saving him?"

"Why," said the old man, "the durn scoundrel owes me seventy-five cents."

The story was perfectly apropos to the point the governor was making and brought from the audience vociferous applause.

Not far from the same time—I do not recall distinctly the date—I heard Governor Harris make before the Supreme Court at Jackson one of the most impressive legal arguments I have ever heard. It was in a criminal case. A young man named Fitzgerald, the son of an old friend of Governor Harris, had been indicted and convicted for murder, in Gibson County, and the case appealed to the Supreme Court. Governor Harris volunteered to defend him in the Supreme Court, without fee, as he stated to the court. His argument was unanswerable, and the case was reversed and remanded, and, as I was informed, the defendant acquitted on a second trial.

Several years later, and while Governor Harris was a United States Senator, I heard his epoch-making address before the State Convention on the subject of the state debt, the agitation of which had split the Democratic party. Many now living will, no doubt, recall this agitation and its result. A state debt of approximately thirty millions of

dollars had accumulated, partly in bonds issued by the state in aid of railroads and turnpikes before the war, but largely in bonds issued under the Brownlow régime after the war, for various purposes.

It was developed that for a large part of this enormous debt the state had received nothing—that gigantic frauds had been committed in its creation and manipulation; and soon after the Democratic party came into power in the state, after 1870, the agitation I have referred to began, for either the repudiation or the compromise and settlement, in some form, of this debt. The rate of interest was high, and the state had defaulted, for years, in its payment. A considerable element of the people were for its down-right repudiation; but the two principal factions favored, the one a scaling of the debt down to an amount which the people could bear without oppression—these were called "low-taxers"; and the other a recognition of the whole debt and the levy of taxes sufficient to pay the interest, high as it was—these were called "high-taxers," or more commonly, "Sky-blues."

Finally these factions split the party; the "sky-blues" in their convention nominated John V. Wright as their candidate for governor on a platform favoring recognition of the whole debt; and the "low-taxers" in their convention nominated as their candidate for governor, S. F. Wilson, afterwards Judge Wilson, of the Court of Appeals, on a platform of opposition to such a settlement. It is worthy of note, in passing, that the leaders of the "sky-blues," who euphoniously dubbed themselves "state credit" men, were very largely men who paid no taxes at all. For example, their nominee,

John V. Wright, was of that class. It was told of him that, when he was living in Columbia, Nat Wilkes of the firm of Bullock and Wilkes, rushed into his office one day and said to his partner with some elation, "Well, Bullock, I've just done a thing I'll venture no lawyer ever did before. I've made ten dollars off of John V. Wright."

"Indeed" said Bullock, "that was a feat. How did you do it?"

"Well," replied Nat, "he asked me to loan him twenty dollars and I got off with loaning him only ten."

The result of this split was, the election of a Republican governor, Judge Alvin Hawkins, and a Republican legislature, on a platform favoring an intermediate position on the state debt. This legislature passed what came to be known as the "Sixty and six bill," in substance, authorizing a settlement of the state debt at sixty cents on the dollar, and six per cent interest. This act was promptly declared unconstitutional by the Supreme Court, remitting the whole question again to the forum of politics.

Then ensued a strenuous effort of the Democratic factions to unite, and they were all called to meet in state convention at Nashville, and Governor Harris, then United States Senator, was specially invited to attend and address the convention.

The party was practically "up in the air" as to what should be done; no definite program had been formulated; all were looking forward anxiously and expectantly for the "key-note" of Senator Harris, who, in the meantime, was keeping his own counsel and saying nothing.

I never shall forget the thrill of that key-note

speech. The Senator was in fine fettle, and the vast assemblage of Democrats on the "qui vive."

After a few ponderous periods, the Senator came at once to the point, and said substantially—for I cannot give his exact words: "Fellow Democrats, I understand that the state debt is the rock on which our party has split, and now I am in favor of splitting the rock!"

This phrase, "splitting the rock," was uttered with telling emphasis, and the idea it implied seemed to be caught and taken in simultaneously by every member of the convention. They broke out in thunderous applause, which lasted for many minutes. And though many more fine things were said by Senator Harris before he concluded, the members seemed to be all the while thinking of "splitting the rock." The result was, that all factions reunited in the nomination of a governor on a platform favoring a settlement of the disputed portion of the state debt on the basis of a "split" of the principal to fifty cents on the dollar, and a "split" of the interest from six per cent to three per cent. The Governor and legislature were elected on that platform, and a law was passed promptly, in accordance with it, known as the "fifty and three bill," and it was accepted by the bond-holders and the debt refunded on that basis, except a comparatively small portion, known as the "State debt proper," and about which there was no question, and which was refunded at full face value.

It is my belief that Governor Harris was the ablest of all the Senators from Tennessee serving in my day. Serving during the days of the "bloody shirt," when the prejudice of the North against all who had participated in the "Rebellion" was so

bitter and blind that any notable activity of a "rebel," like Senator Harris, was calculated to stir the wrath of the Ingalls and Blaines to fury, and do the South, perhaps, more harm than good, Senator Harris prudently and wisely chose to do his work and exercise his influence "on the quiet"; and while he was capable of as able forensic efforts as any of his associates, he made no spectacular appearances and delivered no flaming addresses in the Senate, nor did he assume there any open leadership; nevertheless, he was so able, so trustworthy, so conservative, and so magnetic, that he earned and enjoyed the friendship, respect and confidence of his associates, even among the "radicals," to such an extent that, as I have been credibly informed, his influence in the Senate was second, perhaps, to that of no other member of that body, and certainly of no member from the South. He died in office.

Governor Harris was, at the time of his election to the Senate, and for some years previously, a member and head of the law firm of Harris, McKissick & Turley, of Memphis. I have had occasion to mention in these reminiscences Thomas B. Turley, who subsequently also became a United States Senator, and was a great lawyer. L. D. McKissick, the other member of the firm, was a Henderson County man, and served as Judge on the "Court of Arbitration" of Tennessee, first ancillary tribunal created after the Civil War for the relief of the Supreme Court. He also died in office, as I recall. I tried many cases before him, and found him to be an able and painstaking judge. Had he lived, he would, I have no doubt, have acquired great distinction. He died while yet a young man.

XXXVIII

Reflections on Changes and Recessions from Old Thoughts and Ways—Major Le Grande M. Jones—Calvin F. Vance and George Gantt, Their Amusing Adventure.

SPOTTING about in the vast and variegated field of memory of the men and events of the first two decades of my professional life in West Tennessee, I stumble upon many characters and things that interested me intensely at the time, but which I have scant ground for believing will interest more than a small fragment of the present generation. The world has moved so fast during the last three or four decades, the habits, customs and occupations of the people and their view and conception of life and their appraisal of what is worth while, have been so completely revolutionized and changed, that one of my age is puzzled to know just what will please or be appreciated among what I conceive are the real jewels of the past.

The simple, unsophisticated and contented life seems no longer in vogue. The old-fashioned, princely "southern gentleman" has passed away—become simply a relic of the early days; and few there are now, apparently, who are willing to turn aside from the maze of multiform and exciting diversions and maddening and absorbing struggles for wealth of the present sufficiently to contemplate him calmly in retrospect. Everybody, it seems, is

becoming "high-brow"; our educated classes are fast becoming inoculated with the virus of skepticism; so-called science is endeavoring, in the minds of many, to undermine and uproot the old and simple faith, and supplant it with a dead and spiritless materialism that would substitute for the Christian's hope of eternal life the goal of a heaven on earth, with plenty of money, fine houses, fine dress, fine automobiles fine radios, and the power to gratify every physical and mental desire here and now.

Of course, such a state of mind breeds contempt and loathing for the simple, unsophisticated and common-place men and things of the past.

I have said "apparently" and "it seems." What I have said is true of quite a number of people of the present day, and especially among the "college bred," who, having acquired a "little learning," vainly dream they know it all, and superciliously scoff at the honest champions of the old faith and order. They ignore the wise philosophy and warning of the poet—

"A little learning is a dangerous thing;
Drink deep, or taste not the Pierian Spring,
Where shallow drafts intoxicate the brain,
And drinking deeply sobers us again."

But, thank God, all the people are not of this mind. There is virtue in this old world still. The masses have not yet been corrupted by the skepticism and carping criticism of the rugged and simple old faith and ways. And it is to these I address these reminiscences of mine; they are not meant for the skeptical high-brow. Let him go his way—

we boys in the sticks will go ours, and these ways will not cross each other. The goal to which they respectively and ultimately lead may be left to time and eternity.

What I have so far written would be a more appropriate introduction to a reminiscence of William J. Bryan, which I purpose to write later; but for the present I shall continue to dwell on "characters" nearer home.

I have mentioned several "characters" of West Tennessee, in and out of the legal profession. I beg indulgence to mention just a few others.

And first, Major Le Grande M. Jones, of Trenton. He has been dead many, many years—and, by the way, let me say here, I do not purpose discussing living persons; they can take care of themselves while they live; and, moreover, I do not care to lay myself open to the charge of flattery, nor subject myself to assault and battery.

Major Jones was as fine a specimen, physically, of the genus homo as I have ever seen, and as true a type of the old-fashioned, antebellum "southern gentleman" lawyer. Tall and portly—neither overtall nor over-fleshed—with the softest of voices and the suavest of manners, graceful, dignified, cultured, considerate, modest, courteous, reticent, cautious, and self-effacing in consultation, but aggressive, powerful, irresistable—a veritable "whole-team"—in argument. He was one of the most effective and forceful "advocates" before a court or jury I have known, and yet one of the poorest judges.

I have had occasion to observe, in these reminiscences, that it is not always the best advocate that makes the best judge. The truth of this observation

was illustrated in the case of Major Jones. He was never a regular, commissioned Judge, to my knowledge, but he was chosen by counsel as Special Judge to preside in and try an important case in Perry County, and it is from my observation of him in that case that I make the above statement.

Major Jones did not practice regularly in Perry County; in fact, he never had but one case in that county to my knowledge, and that was a large case involving the title of about 30,000 acres of land, in which Waller C. Caldwell, then a young man and afterwards Judge of the Court of Referees and Supreme Court, was associated with him. Attending the court, in 1873, I think it was, for the trial of that case, which was continued, Major Jones was agreed on by counsel as Special Judge to try a case in which Judge Walker, the regular Judge, was of counsel, and hence incompetent. The case had been brought soon after the war, and involved the validity of a $1,000-bill, alleged to be counterfeit, and the bill had been lost pending the suit. Judge Bateman, Judge Walker's former partner, and Col. N. N. Cox of Franklin, were the attorneys of the respective parties. There were only about half a dozen witnesses, and the trial consumed only a part of one day.

The Major was called upon to make many rulings on evidence, and, of course, to deliver a charge to the jury. He was awkward, and often at a loss what to do, but blundered through to the end of the trial. The jury returned a verdict, which the losing party moved to set aside because of numerous errors of the Judge, both in his rulings on the evidence and in his charge.

As soon as these errors were suggested, the Ma-

jor saw his mistakes, and promptly granted the motion, without costs, and, coming down from the bench, declared that he was unfitted for a Judge, and that as long as he lived he would never act as Judge again.

As I have said, Major Jones was reticent and cautious in consultation,—he was really so cautious that he was practically non-committal, without broad qualifications and reservations.

It was told of him—and I have no doubt truly—that soon after the new Supreme Court of 1870 was elected, and presumably after the Major had lost some cases in that court, he was approached by a client and his opinion asked on a certain state of facts; and that the Major's reply, speaking very cautiously and precisely, was, "Well, I am not prepared to say just what our present Supreme Court would hold on that question. However, I apprehend that, perhaps, if the law isn't" so-and-so (stating it) "it ort to be that way."

That was about as far, it was said, as the Major could ever be gotten on an opinion. Nevertheless, as I have said, he was exceedingly forceful in advocacy. When on his feet before a court or jury, he did not mince words nor show any hesitancy in declaring his views.

There were several "characters" among the members of the Memphis bar, and many amusing things might be related of them. I have only referred to one or two of them.

Judge Calvin F. Vance was one of these characters. Judge Vance was an eccentric but lovable "old granny" of a man, soft- and low-spoken and slow-motioned, careful and painstaking, plodding, credulous and unsuspecting—easily imposed upon,

honest and frank, absentminded, and very forgetful. He was low and heavy-set, wore a brown wig which made him look much younger than he was, and he was the very embodiment of kindliness and gentleness.

George Gantt, on the other hand, was a most brilliant man—perhaps the most brilliant at the Memphis bar of his day, much younger than Judge Vance, and a great wit and wag, always full of boyish fun and pranks. He was very exemplary in his habits, clean in his personal life, and, like Vance, a lovable man.

One warm spring night, at Jackson, while the Memphis docket was being heard in the Supreme Court, and the Memphis lawyers were in attendance, they were sitting in front of the hotel, after supper, smoking and talking, as lawyers are wont to do on such occasions, when the personal habits of Memphis lawyers became the topic of conversation. Vance and Gantt were both present, but taking no part in the conversation. Various lawyers, present and absent, and their habits, and especially their bad habits, were discussed. Gantt's name was mentioned, but no one could think of any bad habit he had. He did not drink, he did not gamble, he did not swear, he did not even use tobacco or play golf. They were about to give it up—that Gantt had no bad habit that they could think of, when Judge Vance quietly and softly spoke up, "And you think George Gantt has no bad habit?"

Several voices: "Why, no, Judge—what bad habit has he?" Said Judge Vance:—

"Why, it's lying, and I'm surprised that you haven't found it out."

Particulars were demanded, and Judge Vance

told this story, with a soft and innocent drollery that would have made a bronze statue laugh if it could have understood:

"I had a case with George, in which he wanted to take a deposition out beyond the edge of town. I agreed, and we set a day, and I arranged for George to go out with me in my buggy. That morning I told wife to put in my dinner bucket enough for two. You know I live out a good ways from my office and I always bring my dinner in a bucket like I used to do when I was a school boy.

"Well, when we got out to the place I set my dinner bucket on a table in a sort of ante-room, and we went in a larger room where the witness was waitin', and George proceeded with his direct examination. We had to do all the writin' ourselves, and it was a tedious job. George got through and turned the witness over to me, and got up and walked out. By the time I got through it was nearly three o'clock in the evenin', and I said to George who had just walked in and didn't care to re-examine —I said, 'George, it's too late to get dinner in town. I brought along a little lunch and if you're amind to join me, we'll share it together, I'm hungry.' George said, 'I am, too, and will be glad to join you.' So I brought my bucket in and set it on the table we'd been writin' on, and carefully removed the lid; and then some napkins and spoons and knives and forks and empty dishes; and then some more napkins, and found in the bottom of the bucket nothin' but a lot of chicken bones and spare ribs, all as clean as if you'd scraped them with a knife. I was puzzled, and chagrinned, and disappointed, of course. I am a little absent-minded and forgetful, you know; so I said, after scratchin' my head a bit

and tryin' to think, 'George, I haven't eaten my dinner, have I?' George said, 'Well, now, I don't know. Since you mention it, I believe you did go out while I was examinin' the witness, and perhaps you then ate your dinner and have forgotten it.' All this he stated with seriousness, and I had no doubt he was tellin' the truth. So I apologized for deceivin' him and askin' him to join me in a dinner I had no doubt eaten all by myself. I knew no better," concluded the Judge, "for months and months, and until George found the joke too good to keep, and confessed to a friend of mine that he had eaten that whole bucket of dinner himself while I was cross-examinin' the witness. And so I say he's a liar, and I'm surprised that you haven't found it out."

Judge Vance's story created much merriment, and was apparently the first revelation of Gantt's trick. The old man (lovable old man he was) and Gantt seemed to enjoy the revelation as much as any of the others.

It is hard to imagine the occurrence of such an incident among Nashville lawyers, or indeed among lawyers of any bar now-a-days.

XXXIX

Recollections of William Jennings Bryan—His First Visit to Nashville—Bi-metalism—Coin's Financial School—"The First Battle"—Mrs. Bryan's Preface—Argument on Immortality of Soul—The Commoner—Imperialism—Lectures—Index to His Character—His Story of "Model" Husband.

THE opening paragraphs of my last previous reminiscence, as there suggested, were a more appropriate introduction to a reminiscence of William J. Bryan than to what was therein contained. It has occurred to me that I might as well now, without further delay, offer my recollections of this remarkable man. Although he has not been long dead, and his career belongs to the comparatively recent past and is within the memory of most adult persons now living, yet my recollections of some of the incidents of his life which may have been forgotten or possibly not specially noticed at the time of their occurrence, may not be wholly without interest to the reader.

It must be understood at once that I write under the influence of two admitted impressions, or states of mind, which some may consider handicaps—and not without some reason—namely, a strong friendship and admiration for the man, and a total want of sympathy with his critics and their point of view. Certainly if I were writing his biography, these impressions, incompatable with that impartiality

which a true biographer should possess, would be handicaps; but I am not writing biography, but only my personal recollections, and incidental personal views, expressed freely and unreservedly, and with a sincere and tolerant charity and respect for the contrary views of others. Let no one, therefore, take offense; and if I may seem harsh in some of my expressions and characterizations, let it be set down to my enthusiasm—misplaced as it may be thought it is.

My acquaintance with Mr. Bryan began with his first visit to Nashville in the early nineties, and long before he was ever thought of, or at least mentioned or discussed, as a candidate for president. He came to Nashville during, or in the aftermath of the panic of 1893—I do not recall the exact date—and delivered an address to a small audience in Watkins Hall on the subject of "Bi-metalism." There were not more than, I should say, from 70 to 100 persons in the audience. I was there, and there first met and heard Mr. Bryan. He was then quite a young man, in his thirties, and rather boyish looking. He had not then lost any of his fine, heavy coat of black hair, and his face was destitute of wrinkles, and had the tint and smoothness of youth. He had been, and possibly was then—I don't recall exactly how this was—a member of Congress from Nebraska, and had electrified the country with a speech of extraordinary brilliancy upon the tariff; but he had not yet become a national celebrity.

The country was then and had been for years languishing under the depressing effects of scarcity of money—the circulating medium which he likened, in its relation to industry, to the blood in our veins in its relation to our lives and activities. The gov-

ernment controlled this circulating medium, this blood of business life; and Mr. Bryan's contention was, that it was slowly starving the business of the country to death.

His theme was not so much an advocacy of "free silver" as a philosophical and statesmanlike discussion of the merits and demerits, comparatively, of the systems of "bi-metalism" and "Monometalism." His main proposition was, that a circulating medium based upon the free coinage of two precious metals, such as gold and silver, was not only more stable in its quantity and intrinsic value and consequently its purchasing power, than was one based on a single metal, however abundant its supply might be at any particular time, but also that the supply was more abundant. This question had of course engaged the brains and pens of the ablest publicists and economists for many years, and their views were ably set forth by Mr. Bryan. This discussion is not to be rehashed here; but I may be permitted to say that Mr. Bryan's argument appeared to me unanswerable, and, if I am any judge of such matters, it has never been answered. And I make this further observation without the fear of successful contradiction: That there was far less of the "fiat money" element in the system advocated by Mr. Bryan, than there is in the monometalic system of primary money prevailing in the world today, where the super-structure of "paper promises to pay" circulating as money over-tops and over-spreads the base of "metal" money (gold), as the base of Mont Blanc or Teneriffe would overtop and over-spread its peak if turned upside down.

But the question of the free coinage of silver "without waiting for the aid or consent of any

other nation," was looming largely in the foreground of politics at the time of Mr. Bryan's first visit to Nashville. Many of our older citizens will remember that he was the first to call attention to a little book then recently published, entitled "Coin's Financial School," which was soon after purchased and read by hundreds and thousands of people of all classes here, and indeed all over the country. This book was a sort of kindergarten method of discussion and illustration of the systems of bi-metalism and mono-metalism and their effects, so simple and elementary as to be easily understood by everyone. And this agitation, as all know, resulted in a splitting of the national Democratic party at the end of the second Cleveland administration, in 1896, and the nomination of two tickets for president and vice-president, Palmer and Buckner by the "gold standard" wing, and Bryan and Stevenson by the "free silver" wing, and the election of Mark Hanna's protégé, William McKinley, on a platform pretending to favor the free coinage of silver, but only "by and with the consent of other nations."

I shall not dwell upon this exciting period in our national politics, nor upon Mr. Bryan's "Crown of Thorns and Cross of Gold" speech before the Chicago Convention that undoubtedly brought him his first nomination for president; but shall hasten on to the little incidents in his life to which I desire to call attention.

Soon after the close of the campaign of 1896, Mr. Bryan published quite an imposing volume, entitled "The First Battle," comprising the proceedings of the Chicago Convention and most of Mr. Bryan's campaign speeches. Mrs. Mary Baird

Bryan, his noble wife who has just passed away—peace to her ashes!—wrote a preface to this volume. In that preface she recorded an incident which I think is worth repeating here. While Mr. Bryan was a member of Congress, she said in substance—for I write from memory only—a fellow member to whom he was much attached died, and the Congress was holding the customary obsequies in his memory. Mr. Bryan was on the list of speakers. He was preceded by a gentleman who, in the course of his eulogy, had let fall some expression of atheism or agnosticism, to the effect that his friend had passed into oblivion and that there was no hereafter for him. Mr. Bryan was an intensely religious man, and he was impatient of such expressions, and always ready to combat them. So when it came his turn to speak, he delivered his eulogy as he had prepared it, and then, to answer the suggestion of oblivion by the previous speaker, but without referring to him or his suggestion, he added as his peroration what Mrs. Bryan quoted, and which she did, she said, to show, first, his readiness to meet occasions as they arose, and, secondly, his command of beautiful and expressive English.

Mr. Bryan was a close student of the Bible, and was familiar with the force of the interrogative form of argument, such as that employed by Saint Paul when he asked, "What shall it profit a man if he gain the whole world and lose his own soul?" And so he used, in part, that form in his peroration, but went further and suggested the answer. This was his peroration, as I recall it, for I have not the text before me:

"If the Father deigns to touch with divine power the cold and pulseless heart of the buried acorn

and make it to burst forth from its prison walls, will He leave neglected in the earth the soul of man that was made in His own image? If He stoops to give to the rose-bush whose withered petals float upon the evening breezes the sweet assurance of another springtime, will He withhold the words of hope from the sons of men when the frosts of winter come upon them? If matter, mute and inanimate, though changed by the forces of nature into a multitude of forms, can never die, will the spirits of men suffer annihilation after paying a brief visit, like royal guests, to these tenements of clay?

"Rather let us believe that He who, through His divine prodigality wastes not the raindrop, the blade of grass, or the evening's sighing zephyr, but makes them all to carry out His divine plans, has given immortality to the mortal, and gathered unto Himself the generous spirit of our friend."

It would be difficult, I think, to find in all literature, a more beautiful, simple, and forceful argument for the immortality of the soul. And what a delicate, diplomatic, and at the same time forceful method of answering an adverse suggestion!

Mr. Bryan, soon after the campaign of 1896, established at Lincoln, Nebraska, his home, a weekly journel called "The Commoner," which was devoted to the propagation of his views on political, moral and social questions. It was a cheap publication, at one dollar a year. Mr. Bryan was chief editor, and his brother, Charley, afterwards Governor of Nebraska, was business manager. It had a large circulation, of a million or more, though it carried no business advertisements. It was purely the personal organ of Mr. Bryan. My first subscription for "The Commoner," made soon after it

started, was for ten years—from which it may be inferred how well I liked it. Most of its leading articles and editorials were subsequently compiled and published in book form, several volumes of which I still have. These volumes also contained many of Mr. Bryan's lectures, of which he delivered a great many, all over the country, on political, social and moral subjects. He was a Colonel in the Spanish war, of 1898, but, after the cessation of hostilities, he resigned his commission and took the stump against "Imperialism"; and his propaganda on that subject I have no doubt largely influenced the course of the United States in its treatment of the Philippines.

The Bryan "Chautauqua," in which he lectured for pay, was a great success—attended by thousands upon thousands, and he thereby, and through The Commoner, accumulated a competency if not a small fortune. He delivered many free lectures at Nashville—I don't recall any for which an admission fee was charged. He always filled the Auditorium, and his audiences never tired of him; and though he spoke, sometimes, for more than two hours, he rarely lost an auditor—in fact the crowd usually clamored for him to go on. He had a fine sense of humor, and kept his hearers amused with humorous illustrative stories when not absorbed with his more serious and ponderous arguments. It was a common observation that he, Bob Taylor and Sam Jones were the only speakers that could fill the Auditorium to its capacity and hold the crowd to the end. In more recent times, Billy Sunday and "Gypsy" Smith might be added to the list. He was, perhaps, the most entertaining "orator" of the day. Even those who did not agree with

him in his theories were delighted to hear him, and every honest man and woman respected him for his brilliancy and obvious earnestness and sincerity. Moreover, he was, I think, the greatest preacher and moral propagandist of his age, and probably spoke to more people face to face than any other man who ever lived on the earth.

He was the champion of the "common people," and boasted of being one of them; in fact he well earned the title of "The Great Commoner"; and he was a terror to the "high-brow," the "better than thou" class, the big banker and big manufacturer who sought to use the government for personal favors, and they hated him as the devil hates holy water.

He was an idealist, lived and thought and dreamed far ahead of his time; nevertheless he lived to see more of his measures, for which he was ridiculed and called a "crank" when he proposed them, embodied into our fundamental laws than any other public man of this nation—prohibition, income tax, election of senators by the people, and woman suffrage, are examples. Men may differ honestly as to the wisdom of these measures, or some of them, but none can deny his influence in bringing them about. He believed in and advocated right and justice among men and nations, and fought privilege and favoritism by government on all occasions and under all circumstances—sincerely believed that the golden rule was the best policy, for nations as well as individuals.

I well remember and shall never forget a phrase or sentence with which he closed one of his lectures at Nashville many years ago, perhaps thirty or more, and which I thought and still think was a

perfect index of his character. He had spoken for about two hours on some social or religious question—not political, although a fine thread of politics was unconsciously woven into every subject he discussed—I don't recall just what the subject was; and he closed with the following words—I think I repeat them exactly: "If it were given to me to frame one universal prayer to go up to the throne of Grace from the lips of all men, it would be: 'Lord, teach us the wisdom of doing right.' "

Just as surely as a ray of sunlight penetrating through a crack in a darkened cabin illuminates and makes visible the objects within, so surely does this sentence disclose the real Bryan; there spoke out his very soul.

I could dwell for pages on the noble and lovable qualities of this man, but I must hasten to the close.

I have referred to Mr. Bryan's humor. Let me give just one example of it. A short time before his death and while he was fighting the battles of the "Fundamentalists" against the "Modernists," or, as he put it, of the Christian Believers against the Infidels and Evolutionists, he delivered a lecture at Nashville on the subject, "Is the Bible True?" His lecture was chiefly an attack on the "theories" and "hypotheses" of the "evolutionists"—their thesis that man is descended from a lower order of animals like the ape or monkey. He was discussing Darwin and his suppositions, dignified by the high-sounding word "hypotheses," and was making the point that these were, at best, but "guesses," and poor guesses at that, notwithstanding the big words by which they were designated. "Their trouble is," said Mr. Bryan, "the confusion of terms. They remind me," he continued, "of a man whose wife

had referred to him, at a quilting party, as a model husband. Hearing of it, he became so proud and stuck-up that he quit work and went about town bragging of it. Finally he met a man who said to him that he didn't see anything worth bragging about in being called a model husband, and suggested that he'd better go home and look up the word in the dictionary. This he did, and what do you suppose he found?'' asked Mr. Bryan. ''Why, he easily found the word 'model,' and that it meant 'a small imitation of the real thing.' That sobered him up and he quietly went back to work,'' said Mr. Bryan, as the audience burst into laughter and cheers.

Our friends, the Darwinians, may sneer at these observations, but there are yet many intelligent persons who will not consider them so very far-fetched.

XL

Judge Howell E. Jackson—U. S. Senator, U. S. Circuit Judge, and Justice of U. S. Supreme Court—Judge Waller C. Caldwell—Col. Baxter Smith Incident.

COMING back now to the judiciary of Tennessee, with some further recollections of which I shall close these reminiscences, I shall refer, first, to Judge Howell E. Jackson.

My acquaintance with Judge Jackson began with my first trip to the Supreme Court at Jackson, Tennessee, in the early seventies of the last century. He was then the junior partner in the law firm of Campbell and Jackson, of that place, General Alex. W. Campbell being the senior member. Judge Jackson had then been only recently married to his second wife, Miss Mary Harding, and he and his wife were then living there, with the judge's father, Dr. Alexander Jackson, and Honorable Robert F. Jackson, now one of the most ponderous and sedate as well as able members of the Nashville bar, was a small boy in "knee-breeches" and the baby of the household.

Judge Jackson was then sitting as a commissioned Special Judge of the Supreme Court, in one of the sections of that court, in place of one of the regular Judges who was temporarily disabled. This was before the death of Chief Justice Nicholson, and

while the Court consisted of six Judges, sitting in two sections.

I had argued several small cases before Judge Jackson's Court, and in some way I had so impressed him that, before I left, he invited me to dinner at his father's one evening, where I met his wife, his father, and "Bob." If there were any other guests present, I don't remember them, though there were probably a few others. It was in the spring time, and I never shall forget, as long as I live, the large dish of "broiled chicken" to which we sat down that night. Split in halves, these fat young "spring chickens" were broiled to a queen's taste. It may be that I was unusually hungry, but it has always seemed to me that I have never since had any broiled chicken that tasted quite as good as that. I can almost taste it still, after more than fifty years. Nor can I ever forget the brandy toddy that the old Doctor made for us before we sat down to dinner, and of which we all partook. The occasion was entirely informal—I was not required to "dress up"—just an old-fashioned social and friendly gathering. From that day to their deaths Judge Jackson and his good wife were the staunchest friends of myself and family—seeming more like close kin than mere friends. Judge Jackson gave me his legal business, such as he had, after I came to Nashville, and while he was United States Senator and Judge.

Judge Jackson, while a resident of Jackson, Tennessee, was drafted, unwillingly, by his District into the office of State Senator, his first political office; and while a member of the State Senate, was elected United States Senator from Tennessee. He very soon achieved prominence in the Senate, was re-

garded as the ablest lawyer in that body, and, it was generally understood, acted as chief legal adviser of President Cleveland—certainly he enjoyed the fullest confidence of the President, who ultimately appointed him as United States Circut Judge, from which office he was later transferred to the United States Supreme Court bench, in which latter office he died.

His health was poor during the last few years of his life, and he spent some time at his home at West Meade, near Nashville. It is no doubt within the memory of many now living that he was at home, on a sick bed and absent from his seat on the bench, when the case involving the constitutionality of our first "Income Tax" law came on for hearing in the United States Supreme Court, and when by an equally divided court, of four to four, the decision of the lower court holding it unconstitutional was affirmed, and that, upon an application for rehearing, Judge Jackson arose from his sick bed, went to Washington and sat in the case, and prepared and delivered an opinion sustaining the law, but the effect of which was nullified by the "flop" of Mr. Justice Shiras, of Pennsylvania, who "changed sides" between the two hearings, with the result that the act was finally declared unconstitutional by a decision of five to four. Judge Jackson died very soon afterwards.

Judge Jackson, in person, was of medium height —I should say from five feet eight inches to five feet, ten inches—rather stockily built, with dark hair and dark gray eyes, florid complexion, and always clean shaven, except for a "goatee" on his chin. He was very erect and dignified, but without

the least conceit, ostentation or assumption of superiority—always affable and pleasant.

I not only tried many cases before Judge Jackson, as judge, but observed him as he tried many cases as an advocate. As an advocate, he possessed the rare faculty of being able to select the vital and crucial point in a case, however complicated, and concentrate on it with immovable firmness, to the discomfit of his adversary, yielding all other points. Obviously none but the ablest lawyer can safely venture upon such a course, for a mistake in his selection of the vital point will overwhelm him in defeat. The result was, that he never made a long argument; rarely did he speak more than thirty minutes. He could state the facts comprehensively in as few words as language made possible, and his statements of the law were equally terse; and for authority he rarely cited more than one or two cases, but these were directly on the point. When his adversary would begin to discuss some collateral question, not vital and decisive, he would call him down with "That's all right—grant that; but what have you to say about this?" stating his main proposition.

He was an exception to the rule, which I have more than once suggested, that a good advocate rarely makes a good judge. He really employed in his advocacy the best qualities of a judge—sound discrimination of and emphasis upon the vital and determinative points in a case; and he carried these qualities, of course, into his action as judge.

His power of penetration into and of analysis of the most complicated state of facts was marvelous. I have had him, many times, after I had stated the facts, anticipate me and state my legal proposition

better than I could state it myself, as I approached it and long before I had developed it. How different is this from having a judge, after you have labored half an hour to make yourself plain, ask you a question that shows that he hasn't caught or understood a thing you have said!

Judge Jackson, although always pleasant and affable, was not humorminded—at least I never found him so. Nor was he, I think, an extensive reader of fiction, poetry, or light literature; and if he was given to any sort of sports, or games, or diversions, I was never aware of it. He was a lawyer and judge, pure and simple, sincerely wedded to his "jealous mistress" from his devotion to whom he never permitted himself to be diverted. That he was a most able lawyer and profound judge must be conceded by all who had opportunity to observe him. For him and his noble wife, a daughter of General Harding of Belle Meade, I shall always cherish the most pleasant memory.

Judge Walter C. Caldwell was a member of some one of our appellate court benches for many, many years—I should say at least twenty or twenty-five. I knew him from about the time of his admission to the Trenton bar in the early seventies of the last century. He took the law course after I did, also at Lebanon, where he courted and married a daughter of my venerated old preceptor, Judge Nathan Green, father of our present able Chief Justice Judge Grafton Green.

As I have previously observed in these reminiscences, the Supreme Court was overcrowded and much behind with its work when the new bench of 1870 came in, so much so that the Constitution of that year provided for six Supreme Court Judges,

temporarily, and authorized double sessions, of three Judges each, as a measure for clearing the dockets. I can remember when the court was nearly three years behind—that is, a case would not be reached for hearing for about three years after the filing of the record.

This temporary device was not permanently adequate to its purpose; and after the death of Chief Justice Nicholson, in 1876, when the Supreme Court became one of five Judges and could only sit in one section, the dockets again became congested and clogged, and other devices were resorted to. The first, as I recall, was a "Commission of Arbitration," comprising three "Arbitrators," in each grand division of the state, to whom cases might be submitted by mutual consent of counsel, with provision for their "findings" to be submitted to and reviewed by the Supreme Court. This was followed by a tribunal called the "Court of Referees," similarly constituted, to which the Supreme Court might refer cases, and which was required to make and file written reports of its findings of facts and conclusions of law, which might be challenged by "Exceptions," to be heard and passed on by the Supreme Court, in analogy to the practice on reports and exceptions in the Chancery Courts; this was followed by the "Court of Chancery Appeals," comprised of five Judges, with sessions in each grand division of the state, between the sessions of the Supreme Court, with a more enlarged jurisdiction, defined by statute, and whose "decrees" (none of the previous ancillary tribunals having power to pronounce decrees) were reviewable by the Supreme Court upon appeal on questions of law only—its findings of fact being conclusive; this, in

turn, was followed by the "Court of Civil Appeals," similarly constituted, but whose decrees were reviewable only by certiorari; and finally, by the present system of a "Court of Appeals" for each grand division, comprised of three judges, with still further extended jurisdiction and powers—its decisions reviewable by the Supreme Court also only on certiorari.

It would be interesting to trace more in detail and with stricter accuracy the evolution and expansion of these "side" tribunals, ancillary to the Supreme Court; but that is not within the purpose of these reminiscences, and these tribunals are here mentioned only because of the connection with them of Judge Caldwell and some other Judges I may mention.

Judge Caldwell was a protégé of Judge Thomas J. Freeman, of the Supreme Court, and Judge Freeman was largely influential in having Judge Caldwell appointed on the "Court of Referees," as I recall the status and name of the tribunal at the time. Judge Caldwell "made good" and was continued on this intermediate court, or its successor, until his election to the Supreme bench in 1886, on which he served two full terms, until 1902.

I was perhaps more intimate with Judge Caldwell during his service on the Court of Referees than I was with any member of the Appellate Courts, with the possible exception of Judge Freeman. He was a very painstaking man, and his heart and mind were wholly on his work—he talked of nothing else. I was accustomed, when attending his court, to visit his chambers, and take walks with him, and on these occasions he would spend the time discussing and asking my opinion on questions he was examin-

ing in cases before him—not my cases, for he never referred to them, but cases in which I was not interested. I generally found myself in perfect agreement with him, from which he seemed to take considerable comfort. On one or more occasions I accompanied him, at his request, on a week-end visit to his father-in-law, Judge Green, at Lebanon. One such occasion I remember, when "Grafton" was a lad of, I should say, some twelve or fourteen years, and when the Judge had just had a fine Jersey cow drop a calf, which the Judge was having "fed by hand," because, he said, the milk from the mother in its natural state was "too rich for the health of the calf"; and I well recall the Judge's playing on his family organ some sacred songs before the morning devotions. I should like to say more of Judge Green, which I may do hereafter, for of the many "grand old Southern gentlemen" I have known, he fills one of the highest places in my memory; but I am now on Waller Caldwell.

I was not so intimate nor so closely associated with Judge Caldwell after he became Judge of the Supreme Court. In fact, I didn't like the way he treated Judge Freeman in becoming a candidate against him in 1886. Judge Freeman was very anxious to succeed himself, and the fact that his friend and protégé ran against him and beat him almost broke his heart. I felt that Judge Caldwell's course savoured of ingratitude, and I must confess that I never had exactly the same feeling for him afterwards.

At the same time, fairness and candor compel me to say that I think Judge Caldwell was a far abler Judge than Judge Freeman. In fact, Judge Caldwell was, in my opinion, one of the clearest headed

and best judges we have had since the Civil War. His opinions, I think, for logic, clarity and force, will compare favorably with the best in our books. He certainly possessed one faculty to a degree I have never known to be surpassed by any other judge, of this state or any other, namely, the power of terse, orderly and lucid oral statement of complicated facts and pleadings and the principles applicable to them. I have many times heard him deliver an oral opinion from the bench, occupying nearly or quite an hour's time, that, if taken down literally and published, would need not to be changed in a single phrase or word. This was a rare faculty indeed, and indubitably evinced a well trained and logical mind—a method of thought almost machine-like.

Judge Caldwell had also a most tender and compassionate heart—a tenderness that sometimes possibly overcame his judgment. With an instance of the manifestation of that tenderness and its influence, I must close this reminiscence.

While he was a member of the Supreme Court there came before that court a case in which a decree had been rendered below against Col. Baxter Smith of Nashville as surety, which, if affirmed, would have utterly ruined Col. Smith. All his acquaintances know what a lovable man Col. Smith was. He was in the court room when the decision was rendered. The question was a close one, and the court had divided on it, three for affirmance and two for reversal; Judge Caldwell was one of the three, and was assigned to deliver the opinion of the majority. It was oral.

He began, in his usual way, to state the facts and history of the case, and the applicable law; Col.

Smith was sitting at the table in front of the court, in plain view; as the Judge proceeded, it became evident to Col. Smith that the decree against him was going to be affirmed, and he manifested the deepest emotion and excitement which he sought to suppress, no doubt unconsciously, by pulling at his beard and hair; this he continued, more and more excitedly, as the Judge proceeded, until his eyes were suffused with tears, and finally, as the opinion neared its end, he quietly bowed his head upon his arms resting upon the table, as the martyr, resigned to his fate, would be supposed to bow his head upon the block to receive the fatal blow—when, to the surprise of all, Judge Caldwell announced, not without a trace of emotion in his voice, that while he started out to deliver the opinion of the majority in which he had concurred, he had become convinced, in the course of the opinion and upon further reflection, that he was wrong, and had changed his opinion, and that, therefore, the opinion of the minority had become that of the majority, and the decree of the court below would be reversed!

It was a dramatic scene, hard to visualize by those who did not witness it. The losing party may have criticized the Judge—as to this I cannot say; no one else did.

Note: Since writing the foregoing reminiscence of Judge Jackson I have been informed by his son, Howell E. Jackson, Jr., of certain qualities of Judge Jackson, manifested in his home life, with which I was not familiar, namely, that "he had a keen sense of humor; greatly enjoyed a joke, even at his own expense; liked to listen to and tell humorous stories; was a great teaser; was an interested reader of fiction, especially in his later years; liked to

shoot small game, and there was nothing he enjoyed more than following the hounds."

Moreover, that he and his brother, General William H. Jackson, for years maintained a large kennel of fox hounds, and that nothing less than a very important engagement could restrain him from the chase of a fox or deer; and that he also "enjoyed a friendly game of euchre, and was a noted chess-player."

These qualities were entirely consistent with his nature and temperament as I knew them; but it so happened that I was never a witness to their manifestation.

XLI

Judge M. M. Neil—Near Tragic Incident at Jackson—Judge S. Frank Wilson—Judge R. M. Barton.

ANOTHER Judge who started on the "ancillary" or intermediate Appellate Courts and finally reached the Supreme Court, where he had a distinguished career, attaining to the Chief Justiceship, was Judge M. M. Neil, of whom I cherish many pleasant recollections.

I knew Judge Neil well, long before he became a judge. His home was also at Trenton, in West Tennessee; and, like Judge Caldwell, he had found his wife at Lebanon, during his law school days there. As was the case with so many West Tennessee lawyers, my acquaintance with him began with our meetings at Jackson in our attendance upon the Supreme Court.

I recall an amusing, though near tragic, incident that occurred one night at the old hotel, then kept by Mrs. Day, which stood on the site now occupied by the elegant and modern "Southern Hotel." Judge Neil and I, both then struggling young lawyers, occupied the same room. Judge Neil was then quite a nervous man and very thin, even thinner than he was in after life. During the night, and after midnight, I was awakened by a cry from Neil that he was very sick. I hastily arose and found that he was gasping for breath, apparently

with some affection of the heart which I did not of course understand. I rushed down to the office and called the nearest physician, a Doctor Branan, as I remember. He came in a very few minutes, and, after administering some temporary relief remedy, said to me that what the patient needed was a strong stimulant—some good whiskey, and that if given that liberally he would soon be all right. All the saloon keepers had long since gone to bed, and the city was dark. The Doctor was able to inform me where one of them lived, and I prevailed on him to remain with the patient until I could get some whiskey; and I hurried to this saloon keeper's house, woke him up and induced him to go to his saloon, where I bought a quart bottle of his best whiskey, with which I hastened back to Neil, and the Doctor gave him a stiff drink. This seemed to quiet him somewhat, and the Doctor left—instructing me to continue giving the patient whiskey until he should fall asleep. I did so, and Neil continued to improve, finally getting up and putting on his clothes. He then got very alert and talkative—garrulous, in fact. He lit a cigar, and began to quote poetry so intently that his cigar would go out, when he would strike a match and relight it; then it would go out again after a few puffs as he talked, and he would strike another match, and this went on until he had almost used up a full box—all the time gesticulating and quoting, and talking eloquently. He had just read Goethe's Faust, and he finally began lecturing me on that. Meantime I was prevailing on him to take a sip of whiskey every few minutes. At last, after an hour or so, the whiskey, and no doubt the cigar with its numerous lightings, brought on a short spell of vomiting, after

which he fell into a sound, quiet sleep, from which he did not awake until breakfast time, when he got up "feelin' fine," and the trouble was all over. After this, he was wholly himself again, as if nothing had happened, and we gave the balance of the whiskey to the porter of the hotel.

I reminded Judge Neil of this incident, and its details, a short while before his retirement from the bench; he remembered the incident, but not all of its details, and was much amused by the reminder.

Judge Neil was not merely a temperate man; he was a total abstainer; if he ever touched liquor on any other occasion I never knew of it.

He was a very painstaking and careful lawyer, a master of details, and a student of principles—inclined to be technical, and rather a stickler for authority or precedent; and these qualities he carried into his office as Judge. His opinions were elaborate and verbose, sometimes tedious, and he was inclined, too much some thought, to cite and review all the previous cases on the point in hand, however numerous. In fact, he was likened by some lawyers to General Campbell of Jackson, who was said to begin every political discussion with a reference to the action of the English barons in wresting Magna Charta from King John at Runnymeade.

But with all his possibly needless detail, Judge Neil was, I think, a great Judge; perhaps not as catholic and broad-visioned as some, but nevertheless a clear thinker, with a deep sense of justice, independence of judgment, honest and conscientious, impartial, and absolutely incorruptible—always for the right, as he understood it.

Like Judge Caldwell, he served a number of years on the Court of Chancery Appeals, and possibly

the Court of Referees—I don't remember definitely as to that—and was elected to the Supreme bench in 1902, and again in 1910, becoming Chief Justice in succession to Judge John K. Shields upon the election of the latter as United States Senator in February, 1913, in which capacity he served until the end of that term in 1918, when he retired. He soon afterwards moved to Memphis where, in connection with his son-in-law and other partners, he enjoyed a quiet but lucrative practice until his death a few years later.

And now I come to another Judge of the intermediate Appellate Courts of Tennessee, who bore the love and esteem of every lawyer of the state—at least, I know of no exception—but who never reached, nor openly aspired to, the Supreme bench. I refer to Judge S. Frank Wilson, of Sumner county.

Judge Wilson I also knew long before he became a Judge. When I first became acquainted with him he was practicing law at Gallatin, with Mr. J. J. Vertrees, now of Nashville, and later with Hon. James M. Head recently deceased, and former Mayor of Nashville.

Wilson was a most able, vigorous and aggressive advocate—bold, earnest, positive, as he was in every station of life he ever occupied, whether political, social, professional or judicial. Whether he was right or wrong—and he was usually right—no one could doubt where he stood on any question. He was pre-eminently a people's man—every pulsation of his heart was for right and justice among men, for fairness and equality, and against all forms of oppression, privilege, favoritism, deception or fraud. If ever there was a man in Tennessee who every day of his life breathed the truly Democratic

spirit of "equal and exact justice to all, special privileges to none," he was such a man. And he, like Judge Jackson, was another exception to the postulate that the able advocate rarely makes a good judge, for that ardent wedding of his very soul to justice, which made him a strong advocate, enhanced and strengthened his judicial qualities, since it was a prudent and considerate discrimination that dominated him, and not a blind, one-sided or fanatical partisanship.

As I have said in a former reminiscence, he was the candidate for governor of the "low-tax" wing of the Democratic party in the "split" on the state debt question, that resulted in the election of a Republican state administration and the passage of the "60 and 6" settlement that was declared unconstitutional. He made a most brilliant campaign, and was supported by a large majority of the Democratic voters, but less than enough to elect. That campaign brought him into the general notice of the state, and not very long afterwards he was made Judge of the Court of Chancery Appeals, to which place, or rather, to a similar place on the intermediate appellate courts, he was repeatedly elected by the people as long as he lived; and although the Court had no titular "Chief Justice," he acted much of the time, and continuously during the last several years of his life, by the choice of his associates, as the "Presiding Judge" of the court. Some of his opinions are as able as are to be found in our Reports—his dissenting opinions often becoming, or being followed by, the opinions of the Supreme Court on review.

Judge Wilson was one of those "jolly good fellows" that no one can help liking. His sturdy hon-

esty and incorruptibility was so well known, that no lawyer could find fault with him for deciding his case against him; he knew that it had been carefully considered, his arguments fully weighed, and that if the Judge had not been right he had nevertheless honestly believed himself so, and that was the end of it—there was no personal criticism. How unfortunate it is that this cannot be broadly and unreservedly said of every Judge! What has been said to be the inalienable right of every lawyer—to sit on a log and curse the judge who has decided against him—was rarely, if ever, exercised as to Judge Wilson.

He was nearly always "hard up" for money, and borrowing from his friends temporarily in anticipation of his salary check—and he always paid these loans; I don't think I ever knew a man to whom it gave more pleasure to pay a debt, or who more keenly appreciated the kindness of his friends. Moreover, he was the only Judge I ever knew who could borrow fifty or a hundred dollars from a lawyer friend today and decide an important case against him tomorrow—or in his favor for that matter—and neither one be surprised or even think of the loan in connection with the decision. That he could be influenced by such favors was simply unthinkable by those who knew him.

Judge Wilson was a confederate soldier, when a mere boy, and lost his left hand in battle, and while Judge he had a fall on the slippery steps of the Capitol and fractured his hip, which made him quite lame the balance of his life; but these physical handicaps, while they precluded him from golf, fishing, hunting and games generally, did not impair in the least his mental vigor nor interrupt his inde-

fatigable labors as Judge. He was of a robust and powerful physical frame and unusually strong constitution, and his health was uniformly good; hence, during his long term of service, he was very rarely absent from the bench.

Judge Wilson, like most of our old Southern gentlemen, loved his "toddy," especially around Christmas times and on other occasions of jubilation, but never drank to excess; and among the pleasant reflections of my past twenty years of life is, that I was able, on more than one occasion, to contribute to his Christmas cheer from a small stock salvaged from anti-prohibition days.

An associate of Judge Wilson for many years on the bench of the Court of Chancery and Civil Appeals, who was very popular with the bar of the state, and to whom I must pay a brief notice, was Judge R. M. Barton, of Chattanooga.

I did not know Judge Barton prior to his accession to the bench, but came afterwards to know him quite well and to be very fond of him, as most lawyers were. He was much younger than Judge Wilson, and very different from him in many respects. He was a low, chunky man, with a rather thin, singing sort of voice, dark complexion, full-face, and clean-shaven except for a mustache. He was a good lawyer, painstaking—rather plodding in his methods of thought and discussion, and wordy in his opinions. All in all, I should say he was a fairly good Judge, not especially distinguished for penetrating and analytical qualities of mind or breadth and depth of views, but, nevertheless, a levelheaded man of sense, sound judgment, reasonably grounded in the law, and a satisfactory Judge. Of his integrity, impartiality, fairness, incorrupti-

bility, and freedom from hobbies, slants, or cranks, there was never any question.

Judge Barton aspired to a place on the Supreme bench, and became a candidate for it, but was unsuccessful and retired to the practice, locating at Memphis. He was later appointed to a place on the United States Labor Court, or Commission, where he served with distinction for several years.

Judge Barton was not, in my opinion I must frankly state, in the class of our ablest judges, but he was a good judge and a good man, well worthy of the high esteem in which he was held by his contemporaries.

XLII

Mediocre Talent on Bench—Judge John M. Taylor—Judge Frank P. Hall—Judge Horace H. Lurton, Most Accomplished Judge Since Civil War.

IN AN elective judiciary, mediocre talent will inevitably sometimes find its way to the bench—not that this is true exclusively of an elective judiciary, for it is sometimes the case when the judiciary is appointive, and especially to short or unexpired terms, where "political pull" is brought suddenly into play with scant opportunity to the executive to make inquiry and give due consideration, or where the executive has a political interest in the appointment.

This is perhaps an unavoidable defect in popular government, and it is still an open question, I think, whether there is possible any better system. My long observation convinces me that there is possible a better system, but these reminiscences are not the proper place for the discussion of political or governmental reforms, and so I refrain from any such discussion. The elective system is firmly embedded in our Constitution, and it is not likely soon to be superseded by any other, and hence we must make the best of it. I am persuaded that there are few competent and observing lawyers in the State who, if they would be perfectly frank, could not point out, within their own observation, several instances

of the placing of men in judicial office, both by appointment and election, who were ill-fitted for such positions, especially in our courts of last resort where the rights, liberties and lives of the people are finally determined.

What I have here said, let it be clearly understood, is not meant as a criticism of the personnel of our judiciary. I have elsewhere tried to make clear my appreciation of the honesty, integrity, and incorruptibility of our judges, of all classes; but their mental qualities and capabilities, if I speak of them at all, I must treat frankly, and I sincerely trust nothing I have said or may say on this subject will be taken as in the smallest degree an imputation against the moral stamina of either the judiciary as a whole or of the person under discussion.

With this explanation, which I have thought necessary to avoid misunderstanding, may I now, in all kindness to their memory, refer to a few Judges, of whom I have the most pleasant recollections, that were undoubtedly, I think, of mediocre judicial talent.

And the first of these I will mention is the Honorable John M. Taylor, of Lexington, Tennessee, who was, successively, a criminal judge and judge of the Court of Civil Appeals.

Judge Taylor was, when I first met him, a candidate, in the summer of 1870, for the office of State District Attorney in the Eleventh Judicial Circuit. He was elected, and served a full term of eight years. He was thereafter State Senator from his senatorial district, member of Congress from the 8th Congressional District, Judge of the Criminal Court of Madison and Henderson Counties, and

finally, Judge of the Court of Civil Appeals—holding public office almost continuously from 1870 until his death in 1911, a period of more than forty years.

From his career it may be inferred that he was a very popular man, and so he was, and most deservedly. But that he achieved any special distinction in any office that he ever held, his most ardent friend would hardly claim. That he was honest and sincere, faithful in every trust, of good sense, prudent, friendly and affable, and universally esteemed and respected, is indubitably true; but that he was of mediocre ability and force, and of limited and superficial knowledge and information on all subjects, whether of law, politics, history, science, art or letters, is equally true. He was, in short, a common-place man, with no endowment of superiority, either by nature or education, over the average members of his class.

How, then, it may be asked, is his long continuance in public office to be accounted for? The answer, I venture to say, were the qualities I have mentioned and the fact that his offices were acquired and held under the elective system. He was "one of the people" and they trusted him. And it was well that they did, for he never betrayed them. While, on the one hand, no great measure of public service was to his credit, on the other, there was no scandal, no betrayal of trust or act of infidelity. His whole life, private and public, was clean, and he had no enemies.

I tried many cases with him, while he was Attorney General, and occupied the same room with him at hotels and boarding-houses on many, many occasions; and I never found the least thing in him to criticize. He exercised the functions of his office

diligently, faithfully and efficiently. He was neither very aggressive nor very forceful; but he was firm in his maintenance of the dignity of the State, never compromised with wrongdoing, winked at crime, or took undue advantage; he fought modestly but straight from the shoulder, and everybody, even his adversaries, respected him. The qualities he manifested redeemed him largely from the handicap of mediocrity; and it is subject to question whether these qualities did not, at last, make him an extraordinary man.

He possessed one quality that was extraordinary, or, rather, was developed to an extraordinary degree, and accounted to some extent no doubt for the attachment of the people to him, and that was, his devotion to his family. For example, I have known him many times to drive home from a distant county, fifty miles or more, over rough country roads, at the end of the week, and return Monday morning, simply to spend Sunday with his wife and children.

He was a church member, though he made no display of his religion; did not drink, play cards, or engage in any sort of sports or idle pastimes, not even fishing or hunting—a serious wound received in the Confederate army, and which lamed him for life, debarred him from all active sports. He did not tell stories nor engage in any sort of levity, and had not much sense of humor; and yet he was not sedate, or solemn, or exclusive, or conceited in any way; on the contrary, he was the very soul of affability—just a common, ordinary, friendly fellow that everybody liked.

His life was one of the best illustrations I know of the truth that even plodding mediocrity may attain great success.

Judge Taylor's career on the Court of Civil Appeals bench was comparatively brief, and yet I believe my brother lawyers who tried cases before him will not disagree with me in my estimate of him. While he may not deserve a monument, as to an outstanding great man, he is, I think, well worthy of the kind remembrance of all who knew him.

Another of our Judges, who held a somewhat similar though not so extended and diversified a career, was the lamented Judge Frank P. Hall, also of West Tennessee—whom, in all kindness and candor, I must also class as of mediocre legal ability.

I had not the pleasure of Judge Hall's acquaintance until after he became a member of the Court of Civil Appeals, in 1908 or 1909. His home was at Dresden, Weakley County. He served on that Court until 1918, when he was elected Judge of the Supreme Court, and he served on that bench nearly a full term, and until July 1926, when he died. His entire service on the Appellate benches extended over a continuous period of nearly 18 years.

Judge Hall had little reputation as a lawyer when elevated to the Court of Civil Appeals—really I had never heard of him, though I knew practically all of the prominent lawyers of West Tennessee. On the bench, he was modest, attentive, reticent—rarely asking a question; a good listener, an indefatigable worker, but slow-minded and plodding. He had great common sense, no prejudices or hobbies, was a close student of the facts, and had a well-balanced sense of justice; but was never, and in my opinion never could be, a thorough and profound lawyer. He well understood the simpler rules of practice and of law, and for cases involving no very fine

distinctions of abstruse principles he was an admirable judge; but his mind was not adequate to the comprehension of fine distinctions and abstruse principles and technicalities, and this is why I class him as of mediocre ability.

He was of attractive personality, of rather above medium height, erect and well proportioned, not to say handsome, but of comely face, and dignified bearing, affable and friendly, free from vanity or conceit, moral and exemplary in his personal life, fair and impartial in his decisions, and wrote fairly good, but not brilliant, opinions.

He had, or at least manifested, little sense of humor, made no display in either language or conduct, was not highly educated or widely read, possessed no distinguished literary quality, nor, so far as I ever knew, any very ardent attachments. He was, in short, of that equable and level-flowing mind and disposition which makes no enemies and few ardent, but many ordinary friends. On the whole, he was a good judge, and, it goes without saying, was honest and incorruptible—no breath of suspicion against his integrity and honor ever tainted his good name. His career, like that of Judge Taylor, affords another illustration of the truth that mediocrity of ability is no obstacle to the attainment of great success, even in professional life; and how fortunate it is that this is true. If it were not so, the overwhelming majority of us would be doomed to hopeless failure.

My purpose, when I began this reminiscence, was to mention several judges of the past who fell within the class of what I have termed "mediocrity;" but I find the subject so distasteful that I am constrained to abandon it, and say nothing of

any whom I cannot class above mediocrity, although that term does not, as I have indicated, imply any opprobrium or lack of real merit. It is not pleasant to have to say of a good friend and good fellow who is dead and gone that he was of mediocre ability, and yet if I cannot speak frankly of him, I prefer not to mention him at all; for I am not writing or intending to write mere fulsome and flattering eulogies, but to state plain facts and express sincere impressions concerning men whom I have known. My relations with Judges Taylor and Hall were just as intimate and friendly as they were with other judges whom I have extolled, and our mutual esteem and respect were just as cordial; and if what I have said shall ruffle the feelings of any of their friends I crave their pardon, and shall be only too glad to "take it all back."

Let me then pass quickly to one of whom I can speak my mind unreservedly without one word that can be construed as a disparagement—the Honorable Horace H. Lurton.

And let me begin by saying that Judge Lurton was, in my humble opinion, the most thorough, profound and accomplished lawyer, now deceased, who has occupied a seat on our Supreme bench since the Civil War.

Judge Lurton, as I understand, had taken his law course at Cumberland University prior to 1870. My arrival there as a student was at the close of the fall term of 1869, and "commencement exercises," so to speak, were still going on; and I remember seeing Horace H. Lurton there, but whether as a recent graduate or a visitor to his Alma Mater, I do not recall. I distinctly recall his thoughtful face

and large gray eyes, as they then impressed me, though my meeting with him was brief and only casual.

As I understood then, he was from Clarksville, Tennessee, his home; and he located and practiced there, part of the time at least, in co-partnership with Judge Charles G. Smith, whom I afterwards came to know—the firm being Smith and Lurton. He very soon acquired distinction at the bar. His partner, Judge Smith, became Chancellor, in 1868 or 1869, as I recall, serving until 1875, when he resigned and Judge Lurton was appointed to succeed him, early in that year. Judge Lurton was elected to the Supreme Court bench in 1886. In January, 1893, upon the induction of Chief Justice Turney into the office of Governor, he was made Chief Justice, and served in that capacity until he was appointed United States Circuit Judge by President Cleveland in April, 1893. And in December, 1909, he was appointed Associate Justice of the United States Supreme Court by President Taft, in succession to Mr. Justice Peckham, of New York. He died in July, 1914, while still a member of that Court.

Such was, in brief outline, the professional and judicial career of Horace Harmon Lurton.

In person, Judge Lurton was a comparatively short man, rather stockily built, a little but very slightly stoop-shouldered, full-faced and clean-shaven except for a mustache—on the whole, rather a robust man physically. He was well educated, widely read, of literary attainments and broad general information—a man of real culture. His mind was logical and penetrating, well stored with knowl-

edge of the fundamental principles and analogies of the law, well poised and free from prejudices and hobbies; and his judgment was sound, discriminating, open always to reason and free from partiality. His opinions were lucid and forceful, expressed in dignified and lawyer-like phrases, often with great eloquence, but without needless ornamentation or effort at display.

While he had not the personal magnetism of some of the other judges, nor that cordial affability which invites close personal intimacy, he was not, on the other hand, stiff or difficult of approach, and he enjoyed the universal and unreserved respect and admiration of the bar, and his opinions were and are still regarded as of the highest authority. On the whole, he was a most elegant gentleman, profound lawyer, and able and accomplished judge. His judicial career should be ample evidence of this fact.

He was a most intimate and trusted friend of that great and good man who has recently gone to his reward, William Howard Taft. They served for some years together on the bench of the United States Circuit Court of Appeals, and when Judge Taft became President, he availed himself of the first opportunity to promote Judge Lurton to the Supreme bench, notwithstanding the fact that he was an ardent Democrat. Some thought he did this because of his personal esteem for his personal friend, but I have good reason to believe that, while this personal relationship had some influence upon his action, naturally and inevitably—for Judge Taft was one of the kindest-hearted of men and a most staunch and faithful friend—nevertheless his controlling reason was his knowledge of the great ability of Judge Lurton, and his love of Tennessee

and the southern people. I should like to say more of Judge Taft, and may do so before I conclude these reminiscences, for I knew him from the time when he was a young man and before he had held any office whatever.

XLIII

Judge William F. Cooper—Judge W. C. Folkes—Judge Benj. J. Lea—Judge David L. Snodgrass, Most Unique of Recent Judges.

OF THE Supreme Court Judges elected in 1886, I have so far mentioned only three, namely, Judges Turney, Caldwell and Lurton. The two others were Judges David L. Snodgrass and William C. Folkes. Before referring to them, which I shall do very briefly, it is proper to say a few words of Judge William F. Cooper, who was elected in 1878 and served one term only, until 1886.

Judge Cooper was in some respects a very peculiar man. I had only a very slight acquaintance with him prior to his elevation to the Supreme bench. He was, when I first knew him, a member of the Nashville bar. Later he became Chancellor at Nashville, and his career on that bench was a very distinguished one. He was a great student of the law and an indefatigable worker. While Chancellor he wrote many, if not most of his opinions, and these were published, in three volumes, entitled "Tennessee Chancery Reports," which long were, and still are, often cited as authority by both the bar and bench of the state. They are very valuable, as learned and lucid expositions of the law and practice in courts of equity; but I have always thought them subject to one serious criticism. Judge Cooper was a stickler for authority, and his habit

was to cite authorities for almost every statement of law he made, however simple and elementary, and the marring and disappointing feature of his opinions was, the citation of so many cases and authorities which, when run down, did not at all bear upon the point to which they were cited. These citations, I always believed, were made from digests, without verification—a very slip-shod way of preparing opinions and briefs, and often misleading.

Judge Cooper was a man of independent fortune, an old bachelor—never married—and lived to himself in a handsome residence on Cedar Street near the Capitol, where he maintained the most extensive private law library, perhaps, in the State; and this library was his "den," where he spent practically all his time, when not engaged in court, absorbed in his books.

In person, he was a low, small, compactly built man, round-faced and clean-shaven, baldheaded, rather nervous and quick-motioned, and he spoke with great precision and accuracy. That he was a thorough and well-grounded Chancery lawyer, all who knew him must concede, and his life was clean and exemplary in every sense. He was, however, so wrapped up and absorbed in his profession, that he appeared to be rather cold and distant, was not a good "mixer," and made few warm and close personal friends. The bar respected him, but did not love him. He was in no sense a politician, did not put himself forward, nor solicit support for any sort of office. And these qualities, no doubt, account for his failure to succeed himself on the Supreme bench in 1886. More popular men, personally, were permitted to carry off the prize, without opposing

effort on his part, or even public protest, although, it was understood, he took his failure to be renominated to succeed himself deeply to heart, and immediately upon the expiration of his term he went to New York where he hid himself in obscurity and led the life of a recluse for many years, until both his health and his mind failed, and he finally died a broken and neglected old man.

I have always felt that Judge Cooper was illy treated by his State, and could never bring my mind to blame him for his final abandonment of her, under the circumstances.

As Supreme Court Judge, he was one of the most active members of the Court—delivered more opinions perhaps than any other member—and his opinions were all carefully prepared, well considered, clear and satisfactory; always in writing and read from manuscript, even when oral opinions were customary. I never knew him to deliver an oral opinion. I would not class Judge Cooper as one of our most profound Judges, but he was, I think, above the average, and certainly a most faithful, painstaking and efficient Judge.

He had a keen sense of humor, as indicated in my previous reference to him in the article on "The Goose Case," but if he ever indulged in story-telling or any sort of levity or even games or pastimes, I never knew or heard of it. Nor was he, so far as I know, an extensive reader of general literature, or lover of literature, music or the fine arts; his opinions gave no hint of such tastes or accomplishments; he employed no metaphors, similies or tropes, and yet his opinions were well framed and lucid. They moved on smoothly, like the flow of a limpid stream, never broken by a master-stroke or even a quotable

aphorism. His phrases were neither blunt, nor dazzling, nor dull, nor sparkling—but merely plain, simple and straight-forward statements. He was not, so far as I know, a religious man, did not attend church or public gatherings of any kind; nor did he, so far as I know, ever manifest what we call "public spirit," but lived, apparently, wholly unto himself.

To this latter statement I should make no notable exception: for Judge Cooper was the originator of the Tennessee Bar Association, organized nearly fifty years ago. He wrote its charter, to which his was the first name signed, and he was its first president. The first annual meeting was held at Bon Aqua Springs, on Independence Day, July 4, 1882, at which he delivered a most elegant, scholarly and entertaining address. As an example of his smooth-flowing, simple and easy style, I quote the first paragraph of that address:

"If we sought to designate the present age by some characteristic which would distinguish it from all others, we probably could do no better than to call it the age of associations. The men of science, the men of letters, the professions, the avocations and the trades, have their several organizations. The world, in the fullness of time, has begun to use the wisdom of the old fable of Aesop, which illustrated the advantage of union by the difference in the strength of rods when taken separately and when tied together. And if the universal consensus were not sufficient to justify the action of the Bar of Tennessee, which has brought us together on this occasion, we may find it in that most memorable event in human annals, on the anniversary of which we are holding our first annual meeting."

This tendency toward union and organization, the advantages of which were illustrated by the fable of the bounden rods and the Declaration of Independence, to which the learned Judge so fittingly referred, is even more characteristic of the present day than it was when Judge Cooper spoke; and it would tax to the utmost the most vigorous imagination to predict when and where it will end—perhaps not until, if ever, the visionary ideal of the extreme socialist shall have been attained. And human nature seems to forbid that that event shall ever come to pass.

Judge W. C. Folkes was the youngest of the members elected in 1886, with the possible exception of Judge Snodgrass. He had been a Confederate soldier and had lost a leg in battle, amputated near the hip, and the effect of this wound, together with the arduous labors of the court, undermined his health and he died early in 1890, so that his service on the bench extended only a little over three years.

Judge Folkes was a very sprightly minded man, handsome in person, of a cheerful, rather jolly, disposition, affable and friendly, popular with the bar, and above the average ability as a lawyer; and though not among our greatest judges, he was, nevertheless, a good and satisfactory judge—level-headed, free of hobbies or slants, patient and courteous, direct and clear in his opinions. His life was clean and blameless, and he enjoyed the universal respect of the bar and the real affection of those who knew him best. Upon his death, early in 1890, Judge W. D. Beard, of Memphis, was appointed to the vacancy temporarily, and served only until the following September, Judge Benj. J. Lea, of Brown-

ville, having been elected in August to fill the vacancy permanently.

Judge Lea had been Attorney General of the State from 1878 to 1886, and upon the appointment of Chief Justice Lurton to the Federal bench in April, 1893, he was chosen Chief Justice, and served in that capacity until his death in March, 1894. His term of service on the bench was therefore only a little more than three years, and as Chief Justice less than one year.

Judge Lea, while a most admirable and lovable man, was neither a brilliant lawyer nor a great Judge. In neither his career as Attorney General nor his service on the bench did he display any extraordinary ability. But he was fairly efficient and acceptable in both capacities. Personally he was a very fine looking man, about six feet tall, well proportioned and filled out, of dark hair and swarthy complexion, rather slow-motioned, and very deliberate and dignified. He was very approachable, socially inclined and affable, but a man of few words, with no inclination to humor or levity, serious and earnest, making no display, nor having apparently many very ardent attachments—just a plain, ordinary, well-balanced, level-headed, good man and honest and upright Judge. I was very fond of Judge Lea, and always felt free to approach him on any subject, for he was open and frank, honest and incorruptible.

Judge David L. Snodgrass, first elected in 1886, was again elected in 1894, each time for a full term of eight years. Upon the death of Chief Justice Lea in March 1894, Judge Snodgrass was made Chief Justice, and was continued in that office by the new

court elected in that year, so serving until his retirement in 1902.

Judge Snodgrass was a very different sort of man from any of those I have so far mentioned. Coming from the field of active practice in the Cumberland Mountain counties, he brought with him, as usual with that class of lawyers, a perfect familiarity with the rough-and-tumble practice of the country courts, with the readiness and agility which such a schooling produces; and, moreover, he brought with him what the city-bred lawyer usually lacks, namely, a thorough knowledge of the land laws of the State, as well also as a thorough knowledge of the rules of pleading and practice in the courts of both law and equity.

In person Judge Snodgrass was rather small, slightly below the medium height, thin and wiry, sandy-haired, red-whiskered, peaked-faced, with bluish gray eyes, nervous and quick-motioned, ardent, enthusiastic, bold, courageous, aggressive and self-confident.

His mind partook of the nature of his body—alert, quick, penetrating, logical and analytical, going at once to the heart of the question; and he had the faculty of expressing his views with great vigor, force and clarity, without circumlocution. No one could doubt the meaning of his opinions.

He was inclined to be a little irascible and petulant, impatient of ignorance, of dullness and of obscure, or indirect, or involved, or long-drawn-out statements of lawyers in argument—seemed not to understand why everyone could not state his case as directly, succinctly, and lucidly as he could, sometimes cutting into the midst of counsel's argument and asking, sarcastically, what the case was about.

These oddities of Judge Snodgrass were undoubtedly attributable to his nervousness, for he never really meant to be offensive, though sometimes he appeared to be so. His mind acted so quickly that it ran ahead of counsel, and it worried him that counsel did not keep abreast of him. He was also a stickler for decorum and the formalities of his court. While Chief Justice, and presiding, if counsel began to speak without first saying, "May it please the Honorable Court," he would come down vigorously with his gavel and say, not too courteously, "Counsel will address the Court."

Upon his retirement, he located at Chattanooga, where he practiced for a few years, when his health failed and he soon after died.

I think Judge Snodgrass was the most unique member of the Supreme Court during my day—in fact, since the Civil War. Moreover, I think he was the most quick and sprightly minded of all the members of the court during that period, though by no means the most profound or best lawyer or Judge. In fact, he was a far better advocate than Judge. He was naturally a partisan, and impulsive, better suited for an advocate than a judge. Brilliant though he was, he was more at home in pressing the side he championed than in judging impartially between contending sides. He was, nevertheless, by common consent, a really great judge; the keenness, force and clarity of his mind, his familiarity with the rules of practice, and his innate sense of justice and contempt for pretense, indirection and fraud, compensated largely for his natural impetuosity and partisanship.

He had a keen sense of humor, which he often manifested in his opinions and remarks from the

bench; and with all his stickling for decorum and the formalities of his court, he was, perhaps, the least sedate and dignified of all our Chief Justices. While not college-bred, he was well educated, and wrote with elegance and precision, though never indulging in flourishes or efforts at ornamentation. He wrote many opinions which are valuable, although he shirked writing when he could, and delivered many more oral decisions than he wrote opinions. In his private intercourse he was friendly and affable, and was generally popular with the bar, though some did not like him. On the whole, I think he was a great Judge, far above the average. He was, in short, what we know in Tennessee as a typical first-class mountain lawyer, and that is saying a mouthful.

XLIV

Judge John S. Wilkes—Resolutions Committee Upon his Death—Its Estimate of his Qualities as Lawyer and Judge—Judge W. K. McAlister—"Independent Judiciary"—Episode of McAlister and Green.

IN THE interim between the elections of Supreme Judges in 1886 and 1894, there were two appointments to fill vacancies, the subjects of which have passed away, and deserve mention in these reminiscences—Judge John S. Wilkes, of Pulaski, appointed by Governor Turney to succeed himself, in January, 1893, and Judge W. K. McAlister, of Nashville, appointed by the same Governor, in April, 1893, to succeed Judge Lurton, upon the latter's appointment as United States Circuit Judge, and both elected to full terms in 1894 and 1902.

Of Judge Wilkes, I have said in a previous article that he proved to be one of the best Judges of the Supreme Court serving since the Civil War, and this statement I wish to reiterate and emphasize.

I knew Judge Wilkes long before he was made Judge—was associated with him and in opposition to him in several cases. As a lawyer at the bar, he was one of the most clear-headed and safest I ever knew. His forte, at the bar, was in chancery cases. He was not an eloquent or forceful speaker, did not make a great show before a jury—was not aggressive or self-assertive, but was extremely modest, almost to timidity; nevertheless he was a

fine reasoner, a close student, very prudent and painstaking, and thoroughly grounded in the fundamental principles of law and equity and in the rules of practice in both jurisdictions. In a court of equity, and in the appellate courts, he was forceful, not because of any brilliance of eloquence or oratory, but because of his calm, deliberate, clear, orderly, and logical presentation of his cases. His voice was thin, and somewhat husky, owing to the delicacy of his physical frame—for he was quite slender and thin-breasted; but the matter and substances of his arguments went straight to the heart of the questions involved, and were almost irresistibly convincing to the thoughtful. His logic was so clear and irrefragible that if once you granted his premises you might as well surrender to his conclusion, for it would inevitably overwhelm you.

His habits of attention to details, of painstaking examination, of careful discrimination, of sound judgment, of the logical though practical rather than theoretical consideration of the facts and the application of law to them, he carried with him into the judicial office, and they made him indeed a great judge.

His opinions were not as eloquently framed as those of Judge Lurton and some other members of the court; they exhibited no special literary quality, bore no evidence of an effort to polish, their rhetoric was not always perfect, but they were direct and perspicuously clear, plain and straightforward —not classics, but sound and lucid expositions of his views.

In person, Judge Wilkes was of ordinary, or a little above medium height, very thin and slight build, indicating a rather week physique, slightly

stoop-shouldered, slow and deliberate of motion, dark hair and eyes, sallow complexion, not bald but of thin hair, and always with a full but well trimmed beard. He had a keen sense of humor, which he often manifested in a modest and quiet way; in fact in these respects, he was much like Judge McFarland. His long career on the bench is sufficient proof that his judicial services were acceptable to and highly appreciated by the bar and people of the state.

He died on February 2, 1908. On February 4, 1908, a memorial meeting of the bar of the state was held at the Capitol in Nashville, over which Chief Justice Beard presided, when, after appropriate remarks by various members, the following committee was appointed to prepare suitable resolutions to be presented at an adjourned meeting to be held on March 7, 1908: D. L. Snodgrass, Chairman, Chattanooga; James C. Bradford, J. J. Vertrees, J. M. Anderson and Jno. A. Pitts, Nashville; Luke E. Wright, A. W. Biggs and L. B. McFarland, Memphis; Jerome Templeton, and S. G. Shields, Knoxville; W. C. Caldwell, Trenton; J. H. Henderson, Franklin; Flournoy Rivers, Pulaski; C. G. Bond, Jackson; Granger Latta, Dyersburg; S. J. Kirkpatrick, Jonesboro; C. W. Tyler, Clarksville; W. T. Smith, Sparta; J. A. Susong, Greeneville; Robert Burrow, Bristol; E. H. Hatcher, Columbia, and Foster V. Brown, Chattanooga. I give these names because (with one exception) of their prominence.

At the March meeting, the committee, through its chairman, presented resolutions—which were adopted—embodying an admirable brief sketch of Judge Wilkes' life. These proceedings were pub-

lished in an appendix to 11 Cates, Pages 744 to 760, where also may be found a most excellent picture of Judge Wilkes. This sketch is a most faithful and admirable one, and I commend its perusal to all admirers of real character. It is too long to insert here. But its characterization of Judge Wilkes as a lawyer and judge, by his intimate and able associates, is so pertinent and true that I make no apology for quoting it:

"That Mr. Justice Wilkes was really and truly a great Judge is beyond question. He possessed, in eminent degree, those qualities of mind and habits of thought and work, and that training and experience at the bar and in business, which combine to make, and are essential to, a great judge. It is not claimed for him that he was endowed with any transcendant superiority of natural ability, or constructive genius; and fortunately he did not suppose himself so endowed and place reliance, as some have done, upon such supposed qualities rather than upon laborious and thorough study and research. But to a mind clear, analytical, discriminating and logical, a judgment sound, well balanced and open to reason and truth, and a sense of justice abhorrent of all sham and wrong, he added an indulgent and unflagging attention to argument, a thorough and exhaustive examination into record and briefs until all the facts and pertinent law were marshalled in order before his mental vision, and a knowledge not only of the practice of the courts but of men and their motives, gained from a long and wide experience at the bar and in business; and the result necessarily was his decisions were just and invulnerable, and his opinions cogent and conclusive. . . . No taint touched him as a

man, as a lawyer, or as a judge. Of him may be truly written what the poet Whitestone wrote of Chief Justice Dyer in the Elizabethan age:

" 'He ruled by law, and listened not to art;
Those foes of truth and love—hate and private gain—
His conscience could not stain.' "

Judge McAlister was another of those lovable men, whom it is pleasant to recall and of whom it is delightful to speak. He had but a brief career at the bar when he was made City Attorney of Nashville. When I came to the city in 1888, he was Circuit Judge, of the only Circuit Court we then had, and while still holding that office he was appointed Supreme Court Judge by Governor Turney, as I have stated, and subsequently elected to succeed himself both in 1894 and 1902.

As many readers will remember, there was a split in the Democratic party in 1910 on the liquor question. Governor Patterson had given serious offense to the Supreme Court by the time and manner of his pardon of Duncan B. Cooper for the killing of ex-Senator E. W. Carmack—having issued the pardon before Col. Cooper left the Capitol, immediately upon the announcement of the opinion of the Supreme Court affirming his conviction, and probably before the judgment of the Court had been entered upon the minutes. The campaign of 1908, between Governor Patterson and Senator Carmack, had been very bitter, and one of the aftermaths of this bitterness, or, rather, one of the results of its continuance, was the killing of Carmack by Cooper and his son, Robin Cooper, very

close friends of Governor Patterson. Moreover, as the time approached for the nomination of candidates for Supreme Court Judges to be elected in 1910, the Supreme Court Judges, or at least Judge John K. Shields, conceived the idea, or professed to have information, that Governor Patterson had attempted or was attempting, through the machinery of the Democratic party, to dictate who should be nominated; and accordingly, Judge Shields issued his celebrated manifesto, declaring himself a candidate to succeed himself independently of the action of the Democratic organization, then supposed to be controlled by Governor Patterson, himself a candidate for re-election.

Thereupon was inaugurated what was called the campaign for a "Free and untrammelled Judiciary." The wing of the Democratic party, calling themselves "Regulars," was championing the liquor, or anti-prohibition side of the conflict; and the temperance wing was organizing what they called the "Independent Democratic Party." Most of the other Supreme Court Judges joined Judge Shields in his protest, and became "Independent" candidates, but Judge McAlister was saying nothing although he had been designated as one of the candidates of the "Regulars." The "Independent Democrats" were making up their ticket for Supreme Judges, which included Grafton Green of Lebanon; and just at this juncture occurred an episode which I have always thought most highly creditable to both Judge McAlister and Judge Green. Judge Green was not widely known, never having held office or come in contact with the people of the state; while on the other hand Judge McAlister was well known and admired through-

out the state, had taken no part in the political contests on the liquor question, and some of the "Independents" were anxious to have him on their ticket for Supreme Judge. In this situation and at the last moment it was suggested by some of the leaders of the "Independents" that an effort be made to get McAlister on their ticket provided Green would give way for him. The matter was thereupon put up to Green who graciously, generously, and unselfishly offered to retire in favor of Judge McAlister if the latter would accept his place on the ticket. The matter was put up to Judge McAlister, who was thus practically offered a place on either ticket according to his choice. He considered the matter gravely for several days, and finally said, in substance, that as the regular Democratic party had conferred upon him all the honors he had enjoyed, he would rather go down in defeat with it than to oppose it; and so, he remained on the "Regular" ticket.

Now when it is remembered that at this time the "Independent" ticket was practically certain of success, and the "Regular" ticket doomed to defeat, the action of both of these men was of the noblest sort and deserving of the highest praise; it was indubitable proof of the gratitude and fidelity of the one and the gracious unselfishness of the other.

The event was as it was expected—the "Independent" ticket was triumphantly elected, and the "Regular" ticket defeated; and thus Judge McAlister's judicial career was ended, which I have no doubt otherwise would have continued to the day of his death.

Judge McAlister, as I have said, was a most

amiable man; handsome in person, of most dignified and judicial bearing, modest, affable, courteous, faithful in his friendships and allegiances, clear-headed, upright, impartial and without hobbies or prejudices, of sound judgment, a good lawyer and a good judge, universally esteemed and admired both as a man and judge.

Upon his retirement, he re-entered the practice at Nashville, and for a considerable time was head of a firm composed of himself, his son, Honorable Hill McAlister, and Honorable Edward J. Smith, both among our very best lawyers, but he seldom appeared in court—his chief work being that of counsel and adviser of large corporations; and for several years he was Receiver of the Tennessee Central Railroad, during its long period of liquidation and re-organization. His death occurred in Nashville only a few years ago.

Another result of the Democratic "split" in 1910 on the liquor question, was, as in the case of the previous split on the state debt question, the election of a Republican Governor, Honorable Ben W. Hooper. The "Independents" endorsed Hooper, who was re-elected in 1912; but the legislature, in both years, was much "mixed," so that neither party or faction could have its way unhindered. There was much confusion, and some "breaking of quorums," until 1914, when the two factions of the Democratic party apparently got together, Honorable Tom C. Rye was elected Governor, with a harmonious Legislature, and the condition, as the late president Harding would say, of "normalcy" was restored—the liquor question having been settled and no longer a bone of contention. It is hardly necessary to say, in this connection, that Governor

Patterson, in my opinion one of the really able men of the state—although I opposed his policies when Governor—has since changed his views and convictions on the subject of prohibition, and become one of the strongest and ablest opponents of the liquor traffic in the country.

XLV

Judge W. D. Beard—Judge William Howard Taft—First Meeting with him when a Young Man—Incident in Trial of Spurr Case—Incident of his Homecoming at Cincinnati—His Fine Sportsmanship—Election as President of American Bar Association—His Friendship to Tennessee and the South—His Letter to Author on Latter's 80th Birthday.

ALL THE Supreme Court Judges elected in 1894 have passed away, as well as all of those elected in 1902 except Judge Shields, who is still living and practically retired. I have given my recollections of all of those who have gone to their rest except Judge W. D. Beard.

Judge Beard, as I have said, served as Supreme Court Judge for a few months in 1890, by appointment upon the death of Judge Folkes. He also served as chancellor at Memphis, by appointment upon the resignation of Chancellor B. M. Estes, from Sept. 1891 until Sept. 1892, when Judge Sneed was elected. He was elected to the supreme bench for a full term in 1894, and again in 1902, and still again in 1910. He was made Chief Justice of the new court elected in 1894, and served in that capacity until the end of his second term in 1910. He died December 7, 1910, soon after the beginning of his third term.

Judge Beard was perhaps the most courtly gentleman of all of the judges serving since the Civil

War. He was the very embodiment of courteous urbanity. I knew him as a lawyer, and member of the firm of Clapp and Beard, long before he was elevated to the bench. In person, he was tall and erect, well proportioned, of dignified carriage but without a tinge of haughtiness or conceit, always neatly dressed, affable, unassuming, cordial, companionable, and delightful in social intercourse.

He was a son of the Reverend Doctor Richard Beard, of Lebanon, and brother of Hon. E. E. Beard of that place, long a law instructor in Cumberland University. He was an elegant and perspicuous writer. His opinions flowed with almost musical cadence, and were, at the same time, clear and cogent.

I would not class him as one of the most profound lawyers who have occupied the place which he so long adorned, but he was, I think, both a lawyer and a judge of superior ability, and a man and gentleman without reproach.

I shall not pursue the discussion of our judges, of more recent years; but before I close I wish to say something of one, not a Tennessean, who, as I write, has recently gone to his reward, enshrined in the affections of the American people as it has been the fortune of few men to be. I refer to Judge William Howard Taft.

I do not, of course, propose any sketch of Judge Taft's life, nor any description of his amiable person; these are too well and generally known to justify portrayal here; but only to recall some personal recollections of him, and express some personal reflections upon the man as I knew him.

I had the good fortune to meet and become acquainted with Judge Taft when he was quite a

young man, as I was, and before he had held any public office. His father, Judge Alfonso Taft, whom I also had the pleasure of knowing slightly, was a great lawyer—had been, as I recall, United States Attorney General under President Grant—and lived and had his law office in Cincinnati. Having occasion, in the latter seventies or early eighties, to take depositions in an important case, at Cincinnati, I arranged to take them at Judge Alfonso Taft's office. When we arrived at the office, we were met and taken charge of by young Mr. W. H. Taft, who received and greeted us with such unfeigned welcome and cordiality, and extended to us so many gracious and kind favors—seeing that a room was cleared for us, that we were supplied with stenographer and stationery, cigars, ice water, and every possible comfort and convenience—that he made an impression upon me that remains to this day. He had even then, that same benignant and bewitching smile that never in his life wore off.

I did not meet him any more until after he became United States Circuit Judge. Tennessee was in his circuit, and he not only sat in the Court of Appeals of that circuit, but often, or at least sometimes, attended and held our United States Circuit Court at Nashville. For much of the time he was U. S. Circuit Judge, Judge Lurton was associated with him, and they were very close and warm personal friends. Judge Lurton lived on the same street as I, and but a few doors from me, and when Judge Taft was holding court at Nashville, he usually stopped with Judge Lurton. Judge Lurton would have informal receptions in honor of Judge Taft, when Nashville lawyers would be invited to attend and meet him in social intercourse of evenings, for

both Judge Lurton and Judge Taft were exceedingly popular with members of the Nashville bar. On such occasions, Judge Taft would graciously make himself "just one of us"—all formality, stiffness, or restraint was discarded, and the social intercourse, while respectful, was free and unconstrained. I tried once, the celebrated "Spurr" case before Judge Taft, the trial consuming two weeks, as I have noted in a previous reminiscence; and I may be pardoned for relating briefly an incident that occurred in that trial.

Major Spurr, as president of the failed Commercial National Bank, had been indicted in the Federal Court for the false certification of checks, and on the trial before Judge Taft, Mr. J. C. McReynolds, then a young member of the Nashville bar and now Tennessee's honored representative on the Supreme Court of the United States, was called as a witness for the government. While cross-examining him, I momentarily lost my temper, and put a question which, in both form and manner, verged upon discourtesy. Judge Taft rapped gently with his gavel and, looking at me with his accustomed smile, observed, "Ah, Mr. Pitts, ah, Mr. Pitts." Of course I paused, and realizing at once what I had done, I humbly apologized and took back the offensive words, and that was the last of it. And I sought to conduct the further cross-examination in such a way as to convince both the witness and the Judge that I had meant no discourtesy, and believe I succeeded. Such was Judge Taft's method of rebuke, if rebuke it may be called. Nothing more severe was ever required at his hands; for no one with a spark of self-respect could

have the heart to be consciously rude or discourteous in his presence.

Another little circumstance occurred at Cincinnati in the spring of 1908, which illustrates the character of Judge Taft, and especially his affectionate friendship for the lawyers of Nashville. I was at Cincinnati, in attendance upon the United States Circuit Court of Appeals, and one of my clients, a Mr. Miller, was a resident of the city and member of one of its principal social clubs. It was but a few months after the induction of Judge Taft into the office of president, and he was expected to reach the city, and this club of which he was a member, on a certain afternoon, upon his first homecoming visit since his election; and I was invited by Mr. Miller to attend the club and join the friends and neighbors of Judge Taft in meeting and greeting him, and this invitation I gladly accepted. I went to the club some hour or two before the arrival of Judge Taft, and passed the time in meeting other members and in social intercourse with them. When Judge Taft arrived I was standing in a far corner of a large room, with door leading into a hall from which the judge was to enter. The room was practically full of gentlemen. I was engaged in conversation with Professor Dabney, of the University of Tennessee, with my arms resting on the piano, when Judge Taft made his appearance at the door, surrounded by his old Cincinnati friends who were eagerly gathering around him and shaking his hands. After a moment or two, I excused myself to Professor Dabney, saying I must go and meet the President. I started towards him, and as I approached, and when yet fifteen or twenty feet from him, he looked in my direction and recognized me.

He at once pushed through the crowd and extending his big fat hand at arm's length said, "Why, hello, Pitts! how are you? And how is Vertrees, and Bradford, and Pilcher?"—naming a number of the older Nashville lawyers whom he knew, and for several minutes his home friends had to wait and look on.

Now this was a trivial circumstance, of course. I was not a man of any prominence or particular consequence, and there was no possible reason, and Judge Taft could have had no possible motive, for showing me this attention, other than his abiding personal friendship for members of the Nashville bar, and his innate sense of courtesy in recognizing that I was a comparative stranger in his home city and would appreciate this attention, and his home friends could afford to wait—which they did with the best of grace. Can any one wonder that such little things as these made me love Judge Taft?

I met Judge Taft while he was Secretary of War under Mr. Roosevelt, and he had shown, on all such occasions, the same cordiality, the same friendly greeting, and the same anxiety to know about the boys at Nashville. He seemed never for a moment to forget them, and, to show that he had observed my personal habits closely, he would sometimes ask me if I was still chewing as much tobacco as I used to.

As is well known, the split in the national Republican party in 1912 by the candidacy of Mr. Roosevelt as an independent, resulted in the defeat of both Taft and Roosevelt, and the election of Mr. Wilson. Judge Taft's defeat was a humiliating one, at least it would have been humiliating to most men, for he carried the vote of only two small

states; but Judge Taft took the matter philosophically, without complaint or murmur—exhibiting the same jolly good nature as before.

In fact, one of the most admirable qualities of Judge Taft was his fine sportsmanship—his ability to accept defeat or disappointment gracefully and cheerfully. Nothing apparently, could disturb his pleasing and cheerful equability of temper. That he could sulk about anything was unthinkable, and this is what, I think, made the people love and admire him more perhaps than anything else. He is reported in the press to have once said of himself, "I knew in early life that people never have any use for a man with a sore toe. Then, too, I had a father and a mother who were philosophers. They taught their children the value of work and the necessity of the absence of conceit." How wise those parents! And how faithfully did their noble son keep their counsel!

In the same year, 1913, that he left the high office of president, the love of the people, and especially the better class of lawyers of these United States for this big-hearted man, was manifested by his election as president of the American Bar Association—the highest and most honorable place within their gift. The meeting at which he was elected was held at Montreal, Canada, the first meeting of the Association ever held on foreign soil. He was then just as jolly as he had ever been, even at the height of his political career, and just as free as he had ever been from any sort of grouch or conceit—the same old cordial, smiling friend. His treatment, even of myself on that occasion, was no whit different from what it had been at Nashville and Cincinnati; and I count it no small fortune to

have been a member of the Association that accorded him this gracious honor.

Judge Taft's broadness and freedom from sectional prejudice was another thing that endeared him to all right-thinking people. He was a northern man, born and bred in the north, of a traditionally Republican family, and yet it cannot be forgotten by the people of the south that he elevated to the Chief Justiceship of the United States an ex-Confederate soldier and Democrat, Justice Andrew D. White, of Louisiana, appointed another to an associate justiceship in the same great court, Justice Horace H. Lurton, of Tennessee, and made another Southern Democrat and Tennessean, Hon. Jacob M. Dickinson of Nashville, his Secretary of War.

And finally, when he was himself appointed to the Chief Justiceship of the United States, thus having conferred upon him the unique distinction of being the only person who ever held the two highest and most honorable offices within the gift of the people of this great country—no act of a chief executive ever, in my opinion, gave so unanimous and universal satisfaction; it was not only an act of great wisdom and justice, but a well-deserved tribute of poetical beauty.

And even in that high and dignified office, it is said of him in the press of Washington that "he did not carry the dignity of his robes of office while he mixed with his fellow-men on the sidewalks."

On the 3rd of June, of last year, 1929, I held an informal reception in commemoration of the 80th anniversary of my birth. A card was sent Judge Taft, announcing this reception. I received a most gracious reply, which, after expressing some pleasant reminiscences and his regrets that his official

engagements prevented his attending, concluded as follows: "My heart will be with you in your justified rejoicing. I appreciate the touch of affectionate regard that prompted you to send me an invitation. May life continue to be a satisfaction to you, and may your friends and neighbors continue to render to you the respect which your services to the bar and to the community have always commanded. May good luck and long years attend you. With warm affection, sincerely yours,'

His venerable associate, Mr. Justice Holmes, has said that his heart was "golden." Taken literally, this characterization is hardly accurate, for Judge Taft's heart was much softer and more precious than gold. It is only as a figure of speech indicating the highest and purest qualities of excellence—which no doubt the venerable Justice intended—that the expression can be justified.

If I were called upon to express in one word the chief personal characteristic of Judge Taft, that word would be "sunshine." He radiated good cheer to all around him, even as the sun radiates warmth and light throughout the solar system.

XLVI

Former Partners and Their Families—James A. Cunningham—Stokely D. Hays—Marcus H. Meeks—Firman Smith—Present Partners, K. T. McConnico and Charles P. Hatcher.

BEFORE closing these reminiscences, I must devote a word to my former partners who have passed away, and their widows and families.

I have been exceedingly fortunate in my partnerships—in the character of men with whom I have been associated in that relation. Beginning in 1875, my firm was Pitts and Cunningham, of Savannah, Tenn., which continued until the fall of 1884. Mr. James A. Cunningham, my partner, while not a great lawyer, was one of the best of men, was very helpful in council, a good office man and fine collector, very thoughtful, and of rather a philosophical turn of mind, open, frank and honorable to the last degree. A few years after our separation, he discontinued the practice, and located and lived for some time at Kimmins, in Lewis County, engaged chiefly in trading in lands. While at Kimmins, he wrote many interesting communications published in the Nashville Banner, and became widely known as "Cunningham of Kimmins." Mr. Cunningham was an ardent antagonist of the liquor traffic, and took an active part in promoting temperance legislation. That was in the days of the "Four-mile Law" and its extensions, when saloons were for-

bidden within four miles of a school, not within the limits of an incorporated town or city. It may not be out of place to relate two out of the many incidents illustrating this activity of Mr. Cunningham.

The town of Savannah was incorporated, and within its corporate limits was the Savannah Female College. There was only one saloon in the town, as I recall, conducted by Joe Cavender, a cripple, and exceedingly clever fellow, with a nice wife and several children. Joe had always been a sober man, but he had begun to drink, secretly, and this was plainly shown in the slight bloating of his face. As the law stood at the time of which I write, the corporation of a town the size of Savannah could be summarily abolished on the petition of a given number of resident freeholders—a recent Act to this effect having been passed, in aid of the "Four-mile Law." Cavender's saloon was the only one remaining in the county.

Mr. Cunningham quietly circulated and had signed one evening late by the requisite number of freeholders, such a petition, and filed it that night, without the knowledge of Cavender or the old topers of the town, of whom there were several; and they were surprised and dumfounded next morning to find that the saloon was lawfully closed.

Cavender came at once to our office in great distress, saying he was ruined, that he had never done anything but keep a saloon, knew not how to do anything else, was physically unable to do manual labor, and that his wife and children would starve unless what had been done should be in some way undone, and pleading with us to have mercy on him and recall, if possible, the petition which had been

filed. He cried like a child over what he thought was his sad and hopeless plight.

We listened to him patiently till he was through, when Mr. Cunningham said to him, in substance, and in so many words as nearly as I can quote them from memory: "Joe, you have our deepest sympathy, and we are willing to help you, but not in the way you ask. What has been done is for your good as well as that of all the other people of the town. You are beginning yourself to drink, and it is showing on you, and while you may not realize it, your course, if persisted in, would very soon bring you to the dogs. You think you can do nothing but sell whiskey. You are mistaken. We are your friends, and you have many other friends in town. Our advice to you is, quit drinking at once, sell out your stock and saloon fixtures to some one who can use them lawfully, open a family grocery store, and we will patronize you and urge our friends to do so. In that way you can make an honest living and largely increase the number of your friends."

Joe hung his head in silence for several minutes, as if struggling within to determine what reply to make. Suddenly he looked up, his face brightened, and he said, "I believe you are my friends, and are right in your advice, and I will follow it to the letter from this hour." He did so, became a sober and successful grocery merchant, making much more money than he had ever made in the saloon business, and enjoyed the universal respect of the town. And, I may add, from that day to this, there has never been an open saloon in the county of Hardin, for these more than fifty years.

The other incident was this: We had been designated by Hon. James L. Gaines, Comptroller of the

State, under the Act of 1879, the first of its kind, as agents or attorneys of the State in the Eleventh Judicial Circuit, to investigate all officers handling State revenue, and to collect from them all revenue collected by them and not reported and paid over to the State; and we had been furnished by the Comptroller with the original reports and settlements of such officers from the close of the Civil War up to that time—I think about 1881 or 1882. It happened that, at a term of the Circuit Court of Wayne County the docket was clogged with a large number of felony cases, chiefly cases of homicide and of malicious shooting or stabbing; and by consent of the Judge and the lawyers, a special term was appointed for the trial of these cases and no others, and they were all continued to that special term.

Mr. Cunningham accompanied me in attendance at this special term, and, being struck by the fact, which he soon discovered, that every one of these cases, some ten or a dozen, had originated in a drunken brawl—one of the murder cases being the killing of one friend by another with a jug out of which they had been drinking as they were returning home from town on a wagon—Mr. Cunningham conceived the idea of obtaining from these facts an economic argument against the saloon. It turned out that, at this special term everybody was in the humor to rid the docket of these cases, and they were all disposed of finally, in some way—either submitted or tried, or compromised and settled, and the costs taxed. So Mr. Cunningham procured from the clerk a statement of the costs taxed in these cases, either to the defendants or to the State; and this statement he compared with the reports, in our possession from the Comptroller's office, of revenue

collected in Wayne County, when it was found that the costs taxed in these cases, all growing out of liquor brawls, at this single term of the court, far exceeded in amount all the revenue collected in the county from the sale of liquor since the Civil War—a period of fifteen or sixteen years!

Mr. Cunningham used these statistics with telling effect in the little addresses he made, at every convenient opportunity, against the liquor traffic, aside from and beyond the moral and social evils. All of his children, and there were four or five of them, were boys, and fine little fellows, and the fear and apprehension that they or some of them might be ruined by the allurements of the saloon and strong drink constantly urged him to fight that demon with all his might. His efforts were rewarded, for all his boys grew up to be sober men and fine citizens.

Mr. Cunningham, many years ago moved to San Antonio, Texas, where he continued successfully, his business of trading in real estate. He died only a few years ago. He was my staunch friend to the last, and I am happy to be able to say that never, during the nine years of our association as partners, did a single unkind word pass between us.

His widow, Mrs. Mollie Cunningham, still survives. She is a daughter of Mr. Thomas W. Edwards, deceased, of Linden, in Perry County, for many years Clerk and Master of the Chancery Court of that county, and one of its most prominent citizens—a typical old-fashioned Southern gentleman. Mrs. Cunningham is one of the sweetest old ladies I know, of a disposition that is saintly and angelic, the idol of her children and grandchildren, indeed of all who know her.

In 1884, I was persuaded by Mr. Stokely Donel-

son Hays, of Jackson, to move to that place and join him in the formation of the law firm of Pitts and Hays; so this was my second firm.

Mr. Hays was at that time deputy Clerk of the Supreme Court, under John H. Freeman, principal Clerk. Freeman added his importunities to those of Mr. Hays, and, by the way, he was quite a good lawyer himself, and brother of one of the members of the Court, Judge Thomas J. Freeman, whom I have previously mentioned in these reminiscences, and he paid me what I regarded the highest compliment I ever received, namely, that I and Judge Henry Craft, of Memphis, prepared the best and most lawyer-like decrees of any lawyers who attended his court. Judge Craft was then considered the most polished lawyer of West Tennessee. To be put in a class with Judge Craft, in this respect, was no doubt sheer flattery, but I was vain enough to consider it sincere, and to believe Freeman quite a competent judge of such things, as no doubt he was.

Mr. Hays was well known and stood high at Jackson, and we at once acquired a good practice. He was a fine fellow and fine office man—the best I have ever been associated with. And he was a good and successful lawyer, thorough and very painstaking and methodical in his work. His only fault was, that he was a little high-tempered and irascible, but his temper and irascibility were never manifested towards me—we never in our lives had a cross or even a short word. He was, towards me, the very soul of courtesy and kindness. Our association continued four years, until 1888, Mr. Meeks having joined us in 1886.

Mr. Hays died in the nineties, as I recall, having

been afflicted for several years with locomotor ataxia, which impared his locomotion for some of his last years. He left a widow, Mrs. Gertrude Hays, who still survives—a most cultivated, refined and lovable old lady, still retaining much of the vivacity of youth. He also left several children, all girls but one, and all fine characters, intelligent and well-to-do.

As I have said, General M. H. Meeks joined Mr. Hays and me at Jackson in the latter part of 1886, and the firm then became Pitts, Hays and Meeks, and so continued until the latter part of 1888, when General Meeks and I came to Nashville, where we formed the firm of Pitts and Meeks.

This last named firm continued about nine years, until 1897, as I recall, when it was voluntarily dissolved and I went alone for about three or four years. General Meeks had been Attorney General of the Eleventh Judicial Circuit for eight years, having been elected to that office very soon after his admission to the bar. He was a son of General John H. Meeks, of McNairy County, previously mentioned in these reminiscences. He was regarded as the ablest and most efficient prosecuting attorney the circuit had ever had. Having lived in Nashville from 1888 to his death some three or four years ago, and been a State Senator and a Circuit Judge of Davidson County for many years, General Meeks was well known not only in Nashville, but throughout the State. His administration as Circuit Judge was entirely satisfactory, and he voluntarily retired and re-entered the practice alone.

General Meeks was not only a high type gentleman, in every sense, but a very brilliant man. But,

unfortunately, I think, he made the mistake of entering the office of Attorney General too early in his professional career, before he had acquired familiarity with the general practice, with the consequence that he was, in a sense, awkward in the handling of equity cases, and, indeed, in the preparation of pleadings in complicated law cases. During our association as partners, all such work was assigned to me. His forte was in the trial of jury cases on oral evidence. I have known few if any lawyers who were his equal in retaining and handling facts given in oral testimony, without notes. During his Attorney Generalship, he rarely took any notes beyond the names of the witnesses, and this course was largely pursued in his subsequent general practice. I have always firmly believed that he would have been a much more thorough and effective lawyer, had he devoted his early years to the general practice rather than to the prosecution of criminal cases.

As in the case of my former partners, our association was uniformly and uninterruptedly pleasant. In all the years of our association there was never a difference or harsh or unkind word between us, and to the day of his death I had no warmer or firmer friend.

Judge Meeks died after a sudden and short illness some four or five years ago, leaving his widow, Mrs. Annie Meeks, one son, Henry M. Meeks, and two daughters, Mrs. Loraine Meeks Cooney, and Mrs. Ellen Meeks Gray, all of whom now live in Atlanta, Ga., where the daughters are happily married to fine men of independent circumstances, and the mother lives with them—although she owns a handsome home in Nashville.

Mrs. Meeks, like Mrs. Hays, retains much of the vivacity of her younger days, and is still one of the dearest friends of our family. She is a sister of the late Walter S. Nunnelly, recently deceased, of Vernon, Hickman County, Tennessee, one of the most prominent men of his county, and also for nearly fifty years one of my staunchest friends.

In 1901, I became General Counsel of the Tennessee Central Railroad Company, in its construction period; and my work in that capacity became so arduous and required so much of my time that I formed my fourth partnership connection—a limited and qualified one—with Mr. Firman Smith, under the firm name of Pitts and Smith. We were partners only in the general practice, Mr. Smith having no part in the railroad work.

Mr. Smith was a good lawyer and fine fellow, well educated, a wide reader, and a most courtly gentleman. He was a bachelor. He came to Nashville from Mississippi, some time after my advent in 1888. His father, Mr. A. G. Smith, a very fine old southern gentleman, was a large planter of Mississippi, and some years later sold out his plantation and followed his son to Nashville, where he made his home until his death several years later. The elder Mr. Smith brought with him his wife and an unmarried daughter, Miss Kate Smith, and the four thereafter lived together. The property of the family, upon the death of the father, mother and son, ultimately devolved upon the daughter, Miss Kate, who still resides in Nashville.

The firm of Pitts and Smith continued until 1905, when Mr. K. T. McConnico joined me in the formation of the firm of Pitts and McConnico.

Firman Smith lived many years after the dis-

solution of our firm, spending considerable time in Mexico, and perhaps South America, largely in search of health. Like Messrs. Cunningham, Hays and Meeks, Mr. Smith remained my steadfast friend to the day of his death; and also, as in their cases, I am glad to be able to say, our relations were uninterruptedly pleasant—no short word, even, ever having passed between us.

And Miss Kate, like the widows of my previous partners, remains a favorite friend of my family, and is indeed one of the many really good women of Nashville.

Within the last few years, Mr. Charles P. Hatcher, formerly of Columbia, Tennessee, joined our firm, which is now Pitts, McConnico and Hatcher. Mr. McConnico and Mr. Hatcher are still living and well known to the present generation; and while I could say many interesting things about them, I might thereby lay myself open to the charge of "boosting" my firm, and, besides, they do not come within the purview of my often declared purpose to write only of the dead; but I may appropriately and truthfully say this much: that I make no exception of them in the broad statement with which I began—that "I have been exceedingly fortunate in my partnerships."

* * *

Note: Since the preparation of the above, Miss Kate Smith has passed away. I had the sad honor of serving as one of the pall-bearers and seeing her mortal remains tenderly laid away beside those of her father, mother and brother in beautiful Mount Olivet, covered with flowers, and surrounded by a host of mourning friends.

XLVII

Some Stories that Should not Pass into Oblivion—Too Much Cross-Examination—Diplomatic Retort—The Habitual Objector—Where is Hell?—"The Lunatic, the Lover and the Poet"—The Legend of Creation—Irreparability of the Injury of Slander.

THERE is much truth in the old saying that, "A little nonsense now and then is relished by the best of men."

And so, in deference to that almost universal taste, I shall conclude these reminiscences (with the exception of the address that forms the final chapter) with a few stories, most of them illustrating "points in argument," that I think should not pass into oblivion.

Too Much Cross-Examination

There are many stories illustrating the fatal tendency of some lawyers to press the examination, and especially the cross-examination, of witnesses too far. One of the best of these that I have heard occurred in Bedford County, Tenn., many years ago, in a will case, and in which Col. Thomas R. Myers was the principal actor and victim. Col. Myers was an able lawyer and a most vigorous and severe cross-examiner—brusque, overbearing and at times brow-beating in his methods. He had been a member of the House of Representatives from his County and Speaker of that body some few years before

the trial, and he took great pride in his reputation both as a lawyer and legislator. He was naturally inclined to be a little vain and pompous, thoroughly conscious of his superiority.

The case was a contest of the will of an old gentleman whom I will call Mr. Allison (but that was not his name), and Col. Myers represented the contestants, and sought to avoid the will on the ground of the insanity or mental incompetency of the testator. Col. Ivey, father of Hon. Chas. S. Ivey now of Shelbyville, appeared for the executor. On the trial before the Judge and a jury, Col. Ivey called one of the subscribing witnesses, say a Mr. Koontz (but that was not his name), and after proving the fact of signature and attestation, and that the witness was a close neighbor and intimate friend of the testator, knew him well, and had visited and conversed with him repeatedly during his last illness and until his death, wound up with the question whether in his opinion the testator was of sound mind when the will was made. "Yes, sirree," said the witness, "his mind was perfectly sound. In fact, I had a conversation with him about a week after he made his will and just the day before he died in which he made a statement that showed he had as much sense as ever he had."

"Take the witness," said Col. Ivey, and Col. Myers began his cross-examination. I should say, before proceeding further, that Mr. Dayton, Col. Myers' partner, started to tell me this story one day, at their office in Col. Myers' presence, when Col. Myers broke in and stopped him, saying he never allowed anyone to tell that story but himself; and he proceeded to finish it, so I can vouch for its authenticity.

Col. Myers bristled up when the witness was turned over to him, and proceeded to cross-examine substantially as follows:

Q. "Mr. Koontz, I understood you to say, sir, to Col. Ivey, that Mr. Allison made a statement to you just before his death that showed that he had as much sense as he ever had—did you say that, sir?"

A. "Yes, sir."

Q. "Well, sir, you didn't tell Col. Ivey what that statement was, did you, sir?"

A. "No, sir."

Q. "Well, sir, the court and jury have a right to know what that statement was, sir, so that they may judge of it as well as you; will you state to the Court and jury what that statement was, sir?"

A. "I'd ruther not."

Q. "What! You come before this jury, sir, and say Mr. Allison made a statement to you which had a certain effect on your mind, and you refuse to tell the jury what that statement was! The jury have a right to know, sir, just what you base your opinion on, so tell the jury what the old man said—out with it!

A. "I'd ruther not; it's a personal matter."

Q. "Personal or impersonal, sir, you must tell it; you've no right to palm off on this jury your individual opinion and then conceal from them the basis of that opinion—so out with it, I say; tell exactly what he said.

A. "Please excuse me; I'd ruther not unless I haf to."

Col. Myers: "May it please the Court, I ask that you instruct the witness. It is ridiculous that he should come here and give his opinion, and then

withhold from the jury what he bases that opinion on."

Meantime the crowded audience in the Courtroom was on the qui vive, eagerly watching this contest between the lawyer and the witness, with their sympathies, as usual, favoring the witness, and stretching their necks in the effort to catch every word.

The judge ruled that the question was a proper one, and that the witness must answer.

Witness: "Please Your Honor, must I tell the very words?"

Judge: "Yes, the very words, as nearly as you can remember them."

Witness: "Well, me and Mr. Allison was long time friends. I had lived neighbor to him nigh onto twenty years and seen him every day or two, and——"

Myers: "Come to the point! No parrying. Tell what he said."

A. "Well, Mr. Allison was not a educated man, but he could read, and he tuck the papers and read up on politics and sich things and was well posted and had good ideas about public matters and things, and——"

Myers: "Cut all that out and come down to brass tacks. What did the old man say that so convinced you that he had as much sense as he ever did. Spit it out!"

A. "Well, the day before he died, we wuz a talkin' about things in gineral, and finally we got on to politics, and he sez to me, sez-zee, he sez, Mr. Koontz, that ar legislatur down at Nashville, that Tom Myers wuz churman uv, wuz the orneryest and rottenest legislatur that ever sot in the State; that's jist whut he said."

Col. Myers told me the crowd broke forth in uncontrollable hilarity, so that the Court had to take a brief recess; and that he never recovered from the blow, and of course lost the case.

Diplomatic Retort

Without naming the parties, I may relate the following incident of a retort story that was at once diplomatic and severe. A lawyer in his opening address told an alleged funny joke on his adversary, which the latter quietly resented. In his reply he said:

"My friend's alleged joke reminds me of an incident that occurred one evening around the stove in a small town hotel. Half a dozen or so drummers were chatting of various things, when finally the characteristics of the various nationalities became the topic of conversation. 'Take the French, for example,' said a Yankee drummer, 'they are quick-minded, with a keen sense of humor and ready wit—always recognize and enjoy a joke. The Italians are much the same way. The Scotch have a canny humor all of their own and generally unconscious. The Irish are quick-witted, often blundering into bulls with a blissful ignorance of the humor of them, but with a keen sense of humor in others, and adepts at repartee. The Englishman is slow-minded, sluggish and phlegmatic, never seeing the point of a joke promptly and often distorting it, but ultimately he takes it in. But for mental obtuseness and immunity from the assaults of humor, you can't beat the Dutch. Tell a typical American joke to a Frenchman and he'll see the point at once; to an Englishman, and he'll see the point next

week; but tell it to a Dutchman and he'll never see the point.'

"There was a Dutch drummer present, and he resented and challenged this statement. Said he, 'Now I deny dat, und I put you to de test. You ust tell vun of your American chokes und see if I don't see de point. I shallenge you.'

"So the Yankee drummer told his American joke which, without its ornamental frills and furbelows, was to the effect that there lived a man out west whose feet were so big that he had to use the forks of the road for a bootjack.

"The Dutchman did not crack a smile but continued to look as solemn and stolid as ever; so the Yankee said: 'Now, there it is, just like I said. I've told a typical American joke, and you haven't seen the point, and you can't see it.'

" 'Vell, let me onderstand,' said the Dutchman; 'vot you call de forks uv de roadt? Iss dat vare vun roadt goes dis vay, und anudder roadt goes dat vay?'—illustrating with his spread fingers.

" 'Yes,' said the Yankee, 'that's what I mean.'

" 'Und you say dat a man out Vest haf so pig feet dat he haf to go mit de house oudt und use dat forks uv de roadt for a poot-jack—iss dat vot you say?'

" 'Yes,' said the Yankee, 'that's what I said.'

" 'Ah, vell,' said the Dutchman, 'dat iss no choke at all—dat iss ust a plain American tam lie.' "

This was, of course, a diplomatic way of saying to opening counsel that he had lied.

The Habitual Objector

Some lawyers are in the habit of objecting to everything done by the other side, and even by the

Court; they make themselves a nuisance by their continuous grumbling—nothing can please them. Such a lawyer, whom I will not name, was taken down severely by his adversary likening him to the one of whom the following doggerel was written:

"Give to him power, and fame, and wealth;
Give to him home, and friends and health;
Give him his choice of youth or age—
The manners that do most engage,
The poet's fire, the painter's art,
That burns the brain and moves the heart;
Give to him all that's good to eat,
The ripe, the luscious, sour and sweet;
And add to these flesh, fish and fowl—
Then listen, and you'll hear him growl,
For he's a kicker from way back."

Where Is Hell?

Another amusing comment on the "habitual objector" was made by the late Judge Henry W. McCorry of Jackson. Mr. James M. Troutt, a lawyer of this character, had recently located in the town; and McCorry had just had occasion to take a deposition with him. It was in the days when there were no typewriters or stenographers at hand, and the deposition had to be written out in long-hand. Troutt's habit was to object to practically every question and every answer, with the result that when the deposition was finished his objections were found to have covered more space than the questions and answers.

Coming out late in the afternoon from a day's session of such deposition taking, McCorry met a crowd of us on the side-walk, and at once asked,

"Boys, have any of you ever taken a deposition with Jim Troutt?" It happened that we had not, and we inquired why he asked the question. His reply was, "Well, if you have not, I just want to say that whenever you do, the question will arise at once whether hell is here or hereafter."

We all had occasion afterwards to realize the truth of this prediction.

Boy's Direction to Lost Traveler

Some lawyers have a way of wandering in the statement of their cases, so that it is difficult to follow them, and especially is this so in the appellate courts where the first knowledge of the Court of the nature of the case is gained from the lawyer's statement of it. Not infrequently the Court is constrained to ask such counsel, in the midst of his presentation, what the case is about.

A certain lawyer of this class, whom I will not name, having made such a jumbled and confused statement, in the face of a blank look from the Court which had refrained from interrupting him, was answered by his adversary substantially as follows:

"May it please Your Honors: If I were not familiar with this case, I would have no definite conception of it from the wandering and incoherent statement that has been made, and no doubt Your Honors are wondering what the case is about. The situation reminds me of an incident that occurred some years ago in one of the Counties bordering on the Tennessee River. A traveler who had lost his way came upon a country lad, bare-headed, bare-legged and bare-footed, sitting on a rail fence by the roadside munching a raw turnip, of whom he

inquired: 'Son, I am almost lost; can you direct me how to go to Pinhook?'

" 'Well, sir,' said the boy, 'you jist go 'long that road you're on twell you come to a wide creek bottom; an' nen you go on thu the bottom past a turnip patch an' come to the creek; an' nen you cross the creek an' turn up on th' ither side twell you come to the mouth of a branch; an' nen you go up the branch an' cross over the pint of a ridge; and nen you come to some other branches, and take up one uv 'em twell you come to the top of a hill; an' nen you go on, and go on, an' bimby you'll come to the barrens, an' nen yo go on, an' go on, keepin' the straight foredest road twell you come to whar the road forks three times;' and then the boy added, with a merry twinkle of his eye, 'an if by that time you ain't good lost, I'll be durned!' "

And then the lawyer observed that he apprehended the Court, after hearing the speech of his learned adversary, was precisely in the situation of the traveler after hearing the illuminating directions of this turnip-eating boy.

Telling stories, and especially humorous stories, in illustration of points in argument, was much more in vogue, I think, in the early days than at present. They often turned the scale especially in jury trials. They were rarely classics, and many of them, in fact some of the best, were not fit for print. Among the few that were classics, I will relate three that were used with telling effect—and then must close as there is no room for more.

Handsome Retort from Shakespeare

A very grandiloquent and flowery-speaking lawyer, whom also I will not name, but will say was

much like General Wm. G. Brien to whom I have referred in these reminiscences, once opened his case in argument with much fiction—alleged facts that were not in the record. Opposing counsel opened his reply with the serious and solemn observation that he had thought he knew his adversary, the Honorable gentleman who had preceded him, until he heard his present address. "But now," he added, "I would be utterly unable to classify him but for the faithful description by the great Bard of Nature of three large classes of human beings—the lunatic, the lover, and the poet. These, said the Bard of Avon—

"'Are of imagination all compact:
One sees more devils than all hell can hold—
That is the madman. The lover, all as frantic,
Sees Helen's beauty on an Ethiop's brow;
The poet's eye, in a fine frenzy rolling,
Doth glance from earth to heaven, from heaven
to earth,
And as imagination bodies forth
The forms of things unknown, the poet's pen
Turns them to shapes, and gives to airy nothing
A local habitation and a name.'

"Of course," added the replying lawyer, "my distinguished adversary is not a madman; nor has he the frantic and distorted vision of a lover—he sees no Helen's beauty on an Afric's brow; he is a poet, and has demonstrated this day that as his 'imagination bodies forth the forms of things unknown,' he can, by his tongue, if not his pen, 'turn them to shapes and give to airy nothing a local habitation and a name.' But I can assure your Honors, that when the touchstone of inspection shall

be applied to this record, the beautiful superstructure of supposed facts which the imagination of my friend has projected will melt away like the baseless fabric of a dream."

The Legend of Creation

In a trial for homicide, it appeared that the accused had been subjected to great provocation, though not sufficient, legally, to justify his act. If acquitted, it must be through the exercise of mercy by the jury. The counsel for the accused, a very eloquent and cultured gentleman, after dwelling upon the facts of the provocation and the pitiable condition in which they placed the accused, shown to be really a good man, quoted and enlarged upon the beautiful lecture of Portia to Shylock, in The Merchant of Venice, on the qualities of mercy, emphasizing the consequences to Shylock of his refusal to exercise it, and closed with what he said was an ancient Legend of Creation.

"There is an ancient legand of creation," said the lawyer, "which I have read somewhere at some time, I know not where nor when. It is said that when God had made the heavens and the earth and bejewelled them with the sun, moon and stars, and peopled the earth with animals, birds and fishes, and decorated it with trees and flowers, and the green grass, and placid lakes and rolling rivers and bubbling springs and limpid streams—and had seen that it all was good—He conceived the idea of making man, His noblest creature, as the grand climax and capstone of His great work. So He called a Grand Council of the Cabinet of Heaven, the Ministers of Justice, Truth and Mercy, and said unto

them: 'Let us make man, in Our Own Image, and endow him with a mind to understand, a will to choose, and a free moral agency to work out his destiny in his own way.'

"Justice replied: 'Make him not, O, thou just Ruler, for he will transgress thy laws and ordinances and thou must punish him through all eternity.'

"Truth replied: 'Make him not, O, thou divine Author of all truth, for he will wander away from thy hallowed paths into the highways of sin and pleasure, desecrate thy holy form, and repent thee that thou didst make him.'

"Mercy replied: 'Make him, O Holy and Merciful Father, for though he may transgress thy laws and ordinances, and wander far from thee into the highways of sin and pleasure, yet I will follow him, bind up his wounds and, with love and kindness and forgiveness, bring him back to thee in penitence and rectitude.'

"So God made man; and, placing his hand gently upon his head and looking into his face, said unto him: 'Man, thou art the child of Mercy; go thou and deal mercifully with thy brother.'

"Gentlemen of the jury, I bid you be mindful of this command of your Creator."

It is hardly necessary to add that they were, and that the accused was promptly acquitted.

Irreparable Injury of Slanderous Words

In his appeal to the jury for a large verdict in a case of slander, the lawyer for the plaintiff in substance said:

"Gentlemen of the jury, you cannot compensate

this plaintiff for the injury done her by this foul traduction of her good name. The wisest of men has said that a good name is rather to be chosen than great riches. Money cannot repair such an injury. All the wealth of Croesus cannot wipe out the stain. Its adequate punishment rests with God alone. Let me tell you a little story that illustrates my point.

"A Catholic maiden went to the confessional and said to her priest: 'Reverend father, I am sorely troubled; I have slandered the good name of my neighbor and friend, and the sin rankles in my heart and will not let me sleep. I come to you for absolution, and pray that you instruct me what I may do to repair this grievous wrong.'

"Said the priest: 'My sister, you have indeed committed a great fault. Return to your home and bring to me the most perfect and comely fowl you can find, and receive my further instructions.'

"And when she had brought the fowl, the priest said to her: 'The fowl is indeed perfect, a thing of beauty, reveling in life, and in the gorgeous plumage with which God hath clothed it. Go again to your home and return to me, and as you come pluck from this fowl its feathers, and bring it again to me, naked as it came into the world, and receive my further instructions.'

"Returning, she said: 'Holy father, I have done as you have bidden.'

"Then the priest said: 'Well done, my sister. Once again I bid you go to your home and return to me, and as you come gather up the feathers you have plucked from this fowl, and restore them, each to its proper place, so that it shall appear again as God made and adorned it.'

" 'O! Holy father!' she exclaimed, as she raised her hands in horror, 'it is impossible! These feathers have been scattered to the ends of the earth by the four winds of heaven and no power of man can recover or restore them.'

" 'Just so, my sister, with your slanderous words,' said the priest; 'they have been scattered to the winds and can never be recalled. Your sin is irreparable. You are beyond my power. Go, clothe yourself in sack-cloth and ashes, and do penance the remainder of your days; and, perchance, our all-merciful Heavenly Father may forgive you in the end.' "

Needless to say, there was a large verdict.

XLVIII

Reminiscent Address to Graduating Law Class of Cumberland University, June 3, 1930.

Mr. Chairman, and Gentlemen of the Graduating Class:

Just eighty-one years ago today I first saw the light, and just sixty years ago I was a student in the Law Department of Cumberland University. These are long periods of time in a single human life, though but fleeting moments in the life of a state or nation.

It is needless to say that the opportunity to celebrate these important anniversaries in my life, by an address to the graduating class in the same Department of my Alma Mater, affords me inexpressible pleasure, although what I shall have to say may contain little of either entertainment or instruction.

Having much hesitation and doubt as to the subject upon which I should address you, and endeavoring to measure your wishes by those which were my own when in your situation, I have concluded that you are, as I was, quite surfeited with the contemplation of abstruse questions of law and legal procedure, and that you would prefer perhaps some other field of thought.

As for myself, quite naturally, the occasion suggests an attitude of reminiscence; and as none of

you were living sixty years ago, I venture to conclude that recollections of your Alma Mater at that remote period will be, possibly, more interesting to you than a dissertation upon some occult feature of the great system of jurisprudence with which your minds have been saturated for the past year.

And so, you will, I trust, allow me to indulge my inclination, and to give you, in plain terms and without any effort at ornamentation or display, my recollections of Cumberland University, and especially of its Law Department, as it existed in the year 1870.

When I entered the University as a student in the Law Department in January, 1870, the Reverend B. W. McDonald, one of the ablest Doctors of Divinity of the times, was President; the venerable and Reverend Doctor Richard Beard, father of the late Chief Justice of Tennessee, Honorable W. D. Beard, and of the late lamented Honorable E. E. Beard, of Lebanon, was at the head of the Theological Department; the Honorable Robert L. Caruthers, one of the ablest lawyers of the state and ante-bellum Associate Judge of our Supreme Court, was Dean of the Law Department; and last, but not least, the universally beloved Honorable Nathan Green, son of the renowned Supreme Judge Nathan Green, Sr., and father of our present able Chief Justice, Honorable Grafton Green, was Associate Instructor in the Law Department, afterwards for many years its Dean—to say nothing of other eminent instructors in other Departments.

It was and is, of course, no matter of surprise that an institution so manned and equipped should attract the favorable attention of the country, and

that aspiring and ambitious young men from many states should flock to it to imbibe from and share the stream of wisdom flowing from such a noble fountain; nor is it surprising that there should go out from it literally hundreds of the brightest preachers and lawyers, to make their marks as leaders in their chosen professions. It would be interesting to trace the careers of some of them, but this the time and occasion do not permit.

At that time, that is, when I entered the University in January, 1870, the Law Department was divided into three classes, the Junior, Intermediate and Senior. I had studied the course prescribed for the Junior class, stood and passed an examination upon it, by Judge Green, and entered the Intermediate class; but during that year the course of study was reduced from three terms to two, the Intermediate class being eliminated, so that my Intermediate class became the Junior class.

Whether this reduction of the course of study, and of the time required for graduation from a year and a half to one year, was a wise measure or not, opinions may differ. I think the real and crucial test is, not so much the time required, as the substance and volume of the course of study. The change that was made resulted in somewhat enlarging the courses of the Junior and Senior classes, with only a slight and unimportant reduction of the whole course in point of subjects taught. The course became more strenuous, indeed, but little if any less thorough. For example, my studies, in both classes, embraced more subjects than they would have embraced under the former system of three classes. And quite certain it is, that the change made it possible for many bright

young men of small means to take the course who could not otherwise have done so, and this I think was no mean or small merit.

During the first half of 1870, Judge Green had charge of our class, and its recitals were in an old brick building located in the South-Eastern quarter of the City, apart from any of the University buildings, which has long since disappeared, and of which there is now no vestige remaining. The class was comparatively small, comprising as I recall only about twenty-five regular attendants. There were daily recitations of about two hours.

The method of teaching pursued by Judge Green would not be possible with a large class, of fifty or more. His method was this:

He would assign to the class for study certain chapters or pages of the text-book in hand; and at the following recitation, next day, he would ask each of the members of the class, by name, questions growing out of the lesson, but not in any regular or fixed order, so that no member of the class knew in advance when his turn would come to answer. This made it necessary for each member to give the closest attention and be constantly on the alert; indeed the question was always formulated before the student called upon to answer was named. If the answer was not fully correct and satisfactory, the question would be passed on to another member, and so on, until a satisfactory answer was obtained, when the Judge would follow it up with one of his incomparably lucid expositions and elaborations of the subject, emphasizing and dwelling upon the reason and principle on which the rule in question was founded. Not only would he ask questions growing directly out

of the text of the lesson, but he would "put cases," that is, state a series of facts to which the rule under discussion was more or less applicable, and then ask some member of the class for his opinion of the legal result.

He rarely put a question generally to the entire class, but occasionally did so; and when he did so he would take the answers of all the members, or at least of all who chose to venture an answer, reserving his comments till all were through, when he would indicate the correct answers, with delicate complimentary comments, but with never a word of criticism or disparagement calculated to humiliate or wound the feelings of those who had answered incorrectly; on the contrary, he would, not infrequently, add adroit palliations and excuses for erroneous answers, with the plainest and most lucid expositions of the whole subject, that would bring it within the comprehension and understanding of the dullest mind.

May I not dwell somewhat upon the fascinating personality of Judge Green. I have no scruple or hesitation in saying that he was the best teacher, and one of the best men, I have ever known. He had the power of terse and lucid statement, and of comprehensive and exhaustive explanation and illustration—in other words, the happy faculty of imparting to the untrained mind the knowledge he possessed—to a degree that I have never observed in any other teacher; and he did this in a manner so suave, so kindly, and so courteous, as to endear himself personally to every member of his class. No student could leave his class room without both a clearer conception and understanding of the subject of the lesson than he could possibly obtain

from his own unaided study of the text, and, at the same time, a real filial and affectionate feeling for his great teacher.

Judge Green was wont to emphasize, in his class-talks to his "boys," several things: First, the supreme importance of a thorough mastery of the fundamental principles and analogies of the law, and especially of the common law, without which, he maintained, no one could hope to be a thorough and successful lawyer. With this knowledge, the lawyer would be able, he said, when a case was presented to him, to determine at once, in his own mind, with practical inerrancy, the legal result, and would need to go to the books only for the confirmation and support of his own preconceived views, rather than be compelled to hunt up a parallel case in order to get a start. Here was, I think, true wisdom. How different is the case with many present day young lawyers, especially those who have received their legal education in institutions which teach by the "case method." Ask one of them his opinion on a state of facts, and instead of answering from a thorough knowledge of the fundamental principles and analogies of the great system of jurisprudence, what the result ought to, and must logically and necessarily, be, he will probably say that such and such a judge in such and such a case decided so and so, or perhaps, that he will look up a similar case and see how the question has been decided. The blighting curse of our profession today, as well as of our judicial administration, in my humble opinion, is the "case lawyer," and many of our judges are affected with the same deadly virus. The authority of precedent: Yes, of course, especially where precedent has established

a "rule of property," or a fixed "rule of conduct"; but in all other cases, precedent should yield to the regal and imperative demands of reason and justice as exemplified in the fundamental principles and analogies of the law, the labored and matured product of the wisdom of ages It is related of Sir George Jessel, perhaps the greatest Master of the Rolls England ever had, that, having had elaborately argued before him by eminent barristers a most important case, opened his opinion with the following words, in substance, for I quote them only from memory: "The question involved is a novel one, and presents some difficulty; it has been ably argued, and a great many cases have been cited; however, I have found myself able to reach a solution quite as satisfactory to myself, and to justice, I think, as if no cases at all had been cited."

As between systems of judicial administration ruled by precedent, like ours, and those where each case is determined, under its own facts, according to principles of justice, independently of decisions in other cases, as the system of the French approaches, there may still remain, I think, some ground for intelligent debate.

The second thing Judge Green emphasized was in the same line, namely, admonition and caution against a too strict reliance upon or adhesion to technical rules and precedents. The law, as he conceived, was a human institution, designed for use and application in human affairs and the relations of human beings to each other, and the body and spirit of it was not so much a set of rules of Draconian permanency and inflexibility, as a set of principles, of universal application to all states and conditions, in aid of enlightened justice; that all

rules of law were, or should be, founded in reason, and that where the reason for any rule was absent the rule should not apply. Here again, I think, was profound wisdom.

But these views, I regret to have to say, appear to many to be antiquated, and indeed to some, as entirely obsolete. The study of such legal classics as Coke, Littleton, Blackstone, Chitty, Kent, Story, Parsons and Greenleaf, seems nowadays in certain high quarters to be regarded as wholly unnecessary and useless, if not indeed harmful.

Not many months ago the President of one of our great Northern Universities, referring to the modern tendency to get away from the ancient landmarks, declared that "The movement means that the lawyer will become a social scientist"; and the Dean of the law faculty, elaborating the same subject, boastfully said (I quote his words): "Blackstone's day is not our day, and his law cannot be our law. What does Blackstone know of our problems? What does he know about zoning, or subdivisions, or streets and assessments, or traffic signals, or our philosophic venture of prohibition? In Blackstone's day legal problems were settled in Courts. Today most of them are settled out of Courts. Our purpose is", he added, "to teach our students, from now on, about the world as it is, and the law as it fits this world". And these learned Doctors announced that $6,500,000 would be spent by their institution during the next five years to accomplish this revolution! And thus, according to their view, must go into oblivion not only Blackstone but with him all the other great stars of our legal firmament.

This, it seems to me, is modernism and progres-

sivism gone mad. It means that the lawyer, instead of drawing his equipment of knowledge from the great reservoir of the accumulated reason, experience, logic, and wisdom of the best minds of all ages, must study the current acts, resolutions and regulations of petty legislatures, commissions and city councils, concerning the "zoning" of cities, the laying out of "subdivisions", the building of "streets", the making of "assessments", and the apprehension and punishment of boot-leggers, or their protection—for the learned president doesn't indicate on which side of the prohibition fence he stands.

It is a kindred fallacy, I think, to that which advocates the codification of all laws, as if such a thing were possible. Take from the administration of justice the force and influence of the common law, with its fundamental principles of right, of liberty, of honesty and fair dealing, and the residue would be but an empty and lifeless shell. What better method can there be of settling new problems than to apply to them wholesome and well-settled principles of justice? What could the great Chief Justice John Marshall have done with the new problems presented to him had he been denied the power and privilege of resort to reason and fundamental principles? His great opportunity, and that which I think more than anything else enabled him to achieve the legal distinction he enjoys, was his comparative freedom from the hampering influence of precedent, thus giving free play to his marvelous reasoning powers. Without detaining you with any of the great governmental problems of which he so found the solution, allow me a brief

reference to a single instance of his method of dealing with the simple rights of property.

There came before him a case appealed from a Federal Court in East Tennessee, in which the plaintiff in an action of ejectment for a large body of lands within the state, grounded his claim upon grants issued by the State of North Carolina—after the formation of the State of Tennessee—the grants being based upon locations of North Carolina Revolutionary warrants made before the passage of the Cession Act of 1789, which ceded to the United States the territory of which the State of Tennessee was subsequently formed. The Cession Act had reserved to the State of North Carolina the right and power to perfect inchoate titles in the ceded territory, that is, to issue grants for lands in that territory upon which its Revolutionary warrants had been located prior to the Cession Act. The grants under which the plaintiff claimed had been so issued. The defendants claimed under grants regularly issued by the State of Tennessee, after its formation as a state, for the same lands. At the trial in the District Court, the defendants offered evidence to show that the alleged Revolutionary warrants upon which the plaintiff's grants were based, were forgeries; but the trial Judge, obsessed with the nominally well-established rule that the citizen could not impeach or "go behind" the act of the sovereign in issuing a grant, refused to admit this evidence, and the plaintiff obtained a verdict. The case was appealed, and the sole question was, whether this rejected evidence was admissible.

Chief Justice Marshall delivered the opinion. Without quoting his exact words, I may thus state, briefly and in substance, his method of dealing with

the question, then a new one: Conceding that it is well settled, said he, that a private litigant cannot, as a general rule, be permitted to question the act of a sovereign in issuing a patent or grant of land by matter anterior to its issuance, yet, nevertheless, it must necessarily be true, upon fundamental principles, that such a patent or grant is void under any one of three conditions, namely,

1st. Where the grantor does not own the thing granted, for obviously one cannot grant that which he hath not;

2nd. Where, although the grantor may own the thing granted, such thing is not grantable by the law of the realm; and

3rd. Where, although the grantor may own the thing granted and it be grantable, yet the official acting for the grantor in making the grant hath not the power, by law, to so act.

In any of these cases, said the great jurist, the grant must necessarily, upon fundamental principles, be void; and this being so, upon the same fundamental principles, evidence disclosing these conditions must necessarily be admissible.

Applying these principles to the case in hand, which was an obvious and simple process—for if the warrants were forgeries they were nullities, and the existence of such valid warrants was a necessary condition of the reserved power of North Carolina —the learned Judge reversed the judgment of the trial court.

The third thing which Judge Green emphasized was what is now commonly referred to as "legal ethics", but in his view nothing but open frankness and common honesty and fairness. Nothing was more contemptible, in his view, than the "shyster",

whom he regarded as a corroding barnacle on the ship of organized society, deserving of the severest condemnation. What is termed "sharp practice" was utterly abhorrent to his nature. No cause, he said, was worthy of the efforts of a lawyer which could not be championed openly and with honor. And here again, I think his counsel was wise.

The fourth thing emphasized by Judge Green, and the last to which I shall refer, was, attention to details—to little things. As care for the pennies and dimes ultimately brings the fortune, so attention to the details of a case often assures the favorable result. As the smallest ray of sunlight penetrating a crack in the wall of a darkened cabin illuminates and makes visible all objects within, so the smallest detail of a great and complicated case may change its entire aspect and control the result of the whole controversy. These were Judge Green's views, which he often voiced, sometimes in quaintly humorous ways, in his class talks. He had, I should say here, a most refined and delicate sense of humor, which I may be pardoned for exemplifying by a brief reference to his valedictory address to our graduating class.

He chose for his subject Gulliver's Travels, dwelling especially upon the Liliputians, that midget little race who bound firmly to the earth, during his sleep, their giant enemy, with myriads of their spider-web cables. He dwelt upon the importance of attention to details—to "little things", not only in the law but in all the relations and economies of life, and wound up with the advice to the young men to marry early. "Get you a wife", he said, "to help you care for the *little things,*" and with

the twinkle of the eye and benignant smile which accompanied that expression, he sat down.

During the second half of the year, while I was a member of the Senior class, we were in charge of Judge Caruthers; and the class recited for a time in the same old brick building I have mentioned. But as the winter approached, and the health of Judge Caruthers grew somewhat enfeebled, we recited in his study in his residence on Main Street. Judge Caruthers was then quite an old man, and while a great lawyer, with a distinguished career both at the bar and on the bench, he was a wholly different kind of man from Judge Green. He was by no means "stiff" or unapproachable, but he lacked that friendly cordiality of disposition which invites or encourages intimacy and which distinguished Judge Green; nor did he possess Judge Green's happy faculty of clear statement and lucid exposition. Aside from asking questions arising directly from the subject of the lesson, he spent the recitation period chiefly in telling stories, more or less pertinent to the lesson, arising out of his experience and observation at the bar and on the bench, many of which were exceedingly amusing, and some of which I still remember. Occasionally he would occupy the whole of the class session with these stories, without asking the class a question.

We had also "Moot Courts", a most interesting and important feature. The practice of the law—the application to concrete facts and conditions of the more or less abstract rules, principles and analogies which we learn from legal textbooks, is, in my opinion, and certainly it was so in my own case, the most difficult branch of legal education.

It is a comparatively easy task to learn these rules, principles and analogies; but just how to put them into effect—how to bring and shape a case in Court so as to get the benefit of them—this is something very difficult and well-nigh impossible to learn exclusively from the books.

Realizing this difficulty, and to meet it measurably, the Honorable Abram Caruthers, an early teacher of law in this institution, prepared a sort of manual of practice, entitled "Caruthers' History of a Lawsuit", outlining briefly all the steps to be taken in a suit at law, with suggested forms for every document, from the original process of summons to the final process of execution. Several editions of this work have been published; but we had, when I was a student here, only the original edition, prepared by the author, and which was made the subject of class study quite early in the course. At that time there was no manual of Chancery Practice, such as the later "Gibson's Suits in Equity", and we had no similar guide in our Moot Court suits in equity.

Our Moot Court law cases were framed and conducted according to the "History of a Lawsuit". Outlines of facts, and of disputed matters of fact, would be furnished by our teachers, chiefly by Judge Green, and we would be required to determine the form of action to be brought, make out the writ of summons, with proper endorsements thereon both of the Clerk and serving officer, the bond for costs or oath *in forma pauperis,* the declaration with proper filings of the Clerk, the demurrer if one was thought proper, the pleas, replications, rejoinders, etc., until an issue was reached; then conduct the trial and record the verdict and judg-

ment—certain members of the class being assigned to certain parts of the work. Sometimes Judge Green would preside as Judge, but more often a member of the class would be designated for that office; there would be a clerk and sheriff; a jury would be impanelled; testimony given; arguments made; and the jury charged and verdict returned—in short, every incident of an actual proceeding and trial would be incorporated and illustrated. Judge Green was ordinarily present to direct and keep us straight; for the Moot Court was not a rival contest, as for a prize for accuracy or ability, but an effort to illustrate, in the concrete, an actual trial, and thus give the student some insight of actual Court procedure.

We had quite a nice little law library, comprising text-books, some English reports, and United States and State reports. There were then no great collections of secondary reports and digests like we have today. Smith's Leading Cases and White and Tudor, the Institutes of Justinian and Petersdorf's Abridgement of the Common Law, were about all the works of the kind accessible. Meigs' Digest, the original edition, was the only Digest of Tennessee reports we had. There were some very creditable arguments made by the boys, and some very good "briefs". The "Moot Court" was, indeed, quite an occasion, and of immense help to us.

You will find, I think, young gentlemen, that I have not exaggerated the difficulties to be encountered by the young lawyer as he enters the practice—difficulties, indeed, which will harass him throughout his career; for it is a lamentable fact that a very large *per centum* of meritorious cases, conducted by even the best lawyers, are lost through

some defect of procedure. I very well recall that my first bill in equity was drawn and redrawn more than half a dozen times, and even then it was far from satisfactory, although it did not fail on account of any defect in form or substance.

Another and kindred feature was: We were encouraged and urged to attend the Courts of the County when in session, and witness the conduct of real trials, and I spent many hours in such attendance; and in that way I acquired a knowledge of the methods of practically every member of the local bar.

The bar of Lebanon in 1870 was, perhaps, the strongest of any town of anywhere near its size in the State. Jordon Stokess, Sr., was considered the leader, and his brilliant son James Stokes, had just been admitted to practice. There were also Mr. Robert Cantrell, afterwards Circuit Judge, Judge W. H. Williamson, Col. B. J. Tarver, Col. Ed. I. Galliday, Hon. Emmett Thompson, Hon. Andrew B. Martin, subsequently for many years an instructor in the Law Department, in amiability and efficiency second only to Judge Green, and there were other younger members. Hon. H. Y. Riddle was clerk and master of the Chancery Court, a most highly cultivated gentleman. General Robert E. Lee died in October, 1870, as I recall, and memorial exercises were held at the Court House in Lebanon, at which Mr. Riddle delivered the principal address. That address was a classic. I never shall forget its stately and solemn opening words, delivered with a depth of feeling and pathos that baffles description. They were the opening lines of that noble tribute of one of England's greatest poets to one of Ireland's greatest orators—Byron's "Mon-

ody on the Death of Sheridan". It is impossible to describe the dramatic beauty and appropriateness of the scene, as Mr. Riddle quietly and solemnly rose in that vast audience, hushed to silence by a nation's sorrow, and began—

"When the last sunshine of expiring day,
In Summer's twilight weeps itself away,
Who hath not felt the softness of the hour
Sink on the heart like dew along the flower?
With a pure feeling that absorbs and awes,
While Nature makes that melancholy pause—
Her breathing moment on the bridge where Time,
Of light and darkness forms an arch sublime—
Who hath not felt that calm so still and deep,
The voiceless thought that could not speak, but weep—
A holy concord and a bright regret,
A glorious sympathy with suns that set!"

This intimation of a beautiful comparison of the death of this idolized son of the South with the setting of the sun in the heavens was, I thought, inexpressibly felicitous; and it was followed up with a description of the noble life and character of General Lee that fitted in perfectly with the fine exordium, and was indeed and truly a classic of its kind.

There were Greek Letter fraternities in the University then, of course, several of them, but the Literary Societies were much the more popular. Of these there were two, the Amasagassian and the Philomathean. I was a member of the latter, while some of my room-mates were members of the former. These Societies elected orators, who delivered

orations at "Commencement", or the close of the session. A quite ludicrous incident occurred in each of these societies in connection with these elections of Orator, which it may be of interest to recall.

The only qualification for membership in the Societies was matriculation as a student of the University, in any of the Departments, and the elections were by ballot of the members, the majority vote electing. The "Campaign for Orator" was ordinarily quite a vigorous one.

In the Amasagassian Society the candidates were only two—Lee Head, of Gallatin, Tenn., and Richard Morgan, of Columbus, Ga., both law students, and their campaign was strenuous. There were "stump speeches" every night for weeks on the public square, and much "electioneering", after the manner of a political campaign, and the "partisan spirit" ran high. The tide was running apparently in favor of Mr. Head, a one-armed student, and son of Hon. John W. Head who had been, before the Civil War, Attorney General and Reporter of the State, and author of "Head's Reports." On the last night that new members could be admitted and qualified to vote, about two weeks, as I recall, before the election was to take place, Mr. Morgan corralled and marched to the Burser's office about fifty of the riff-raff of the town—common laborers and boys—paid their matriculation fees, and had them enrolled as members of the Society. This movement, if sustained, would have given Mr. Morgan a clear majority and assured his election. But it outraged the friends of Mr. Head, embracing the members of his faction in his Society, practically all the members of our Society, and many students of the University who were not members of either

Society. Vigorous protests were made, impassioned speeches were delivered, and pandemonium reigned for several nights, resulting finally in a formal written protest addressed to the Faculty, signed by a hundred or more students, accompanied with the declaration that all the signers would immediately quit the University unless the names of these parvenues were at once stricken from the record as students—the protest being based on the very just claim that the scheme was a patent fraud, as not one of the new matriculants had actually entered the University as a student, or contemplated doing so. The Faculty promptly took notice of this protest, made a brief examination of the matter, and ordered the money refunded and the names of the new matriculants stricken from the record. This was done, they were thus disqualified from voting in the Society, and Mr. Head was elected by a large majority. Though not a member of the Amasagassian Society, I took an active part in this "campaign", and I can truthfully say that never, in all the sixty years since, have I taken part in a more strenuous and exciting one.

The incident which occurred in the Philomathean Society was of a very different kind, and much more ludicrous. Before relating it a word of explanation as to one of the candidates for orator is necessary, in order to understand the incident.

A law student from Mississippi, one D. L. Love, was a most peculiar fellow—in some respects very bright, but mentally unbalanced; egotistical, but with a child-like credulity and gullibility that made him the butt of many practical jokes.

For example, one night Mr. George B. Peters, a very brilliant law student from Memphis, was es-

corting a young lady home from Church, or some party, when Mr. Love happened to fall in and walk for some distance close behind them. Peters pretended to be much offended, charging that Love had sought to eaves-drop him and his girl. There was much talk of the circumstance among the boys, who saw to it that this talk got to Love. Finally, pursuant to an understanding with everyone but Love, Peters challenged Love to a duel with pistols. Love wanted to decline and apologize, but was assured by a number of the boys, including the one named by Peters as his second, that the pistols should be loaded with blank cartridges, so that no hurt should come to either, and he was persuaded to accept the challenge and let the duel go on, in order to play a fine joke on Peters and have some fun. So Love accepted and named his second. The seconds determined that the duel should be fought at ten paces, with single-barrelled "derringer" pistols, each to have one shot only. The duel was to take place in a certain cedar grove about a mile from town on the next day, great care being taken to keep the matter concealed from the Faculty.

Accordingly, the combatants met at the time and place appointed, with their seconds, accompanied by quite a crowd of other boys as spectators—all but Love fully in the secret of what was to be done. Love was in a carefully suppressed jubilant state of mind, knowing that the "derringers" were loaded with blanks and believing that Peters was ignorant of that fact. Peters, on the other hand, feigned a very grave countenance, plainly indicating that he feared a fatal catastrophe, and as he took his place opposite Love, pistol in hand, he delivered a brief but very solemn little speech con-

cluding with an affectionate message which he desired sent to his mother in case he should not survive the encounter. Finally, all having been made ready, the challenger's second announced that he would count three, and that at the word "three" each should fire, they having cocked their weapons before the counting began. The count was slowly and distinctly given, amidst a solemn silence that was breathless, and at the word "three", the combatants fired straight at each other. Of course neither fell. As Peters, gazing through the clearing smoke, saw that Love was unhurt, he frowned savagely, and with the exclamation, "Damn it, I've missed him!" threw down his empty derringer and whipped from his pocket a revolver and began firing it rapidly at Love, who, thinking the revolver was loaded and that the joke had miscarried, turned on his heels and yelling "Murder! Murder!" ran like a deer, never stopping till he had reached town. Of course the revolver was also loaded with blanks, as all but Love knew, and as Love got out of hearing the crowd broke into hilarious merriment and struggled for positions of vantage from which to view the retreating hero until he had vanished from sight. This was a cruel joke to play on a grown man, but he did not resent it. On the contrary, though perfectly aware of the prank that had been played upon him, he continued, as before, in his egotistical ways, as if nothing had happened. Many other pranks were played upon this unsuspecting and unsophisticated youth, but this will suffice to show the manner of man he was.

Now Mr. Love was one of the candidates for Orator in the Philomathean Society, and there were four or five others, including myself. Two were to

be elected. There had been no strenuous contest, as in the other Society—little more than a simple announcement of each candidate. Each member was to place two names on his ballot, and the two receiving the largest vote were to be declared elected. On counting the first ballot it was found that I had something over three-fourths of the vote, and that Love was next, with a little above a simple majority. The whole membership was astounded at this result. A hurried consultation developed the fact that a great many of the members, thinking that Love had no chance, had intended to practically "vote blank" as to one of the candidates by putting his name on their ballots, each thinking he would receive no other vote. A motion was made, on some flimsy pretext, to declare this ballot void, and take it over again. I seconded this motion, and advocated its adoption, and my example, apparently, induced Love to favor it, and the motion carried. On a second ballot, I received practically the same vote, and a Mr. Head, of Missouri, a substantial majority, and we were declared elected. Love received a very small vote, less than five per cent, as I remember. He did not seem offended at all, but passed the matter by much as he did the duel with Peters. I do not recall the subject of Mr. Head's oration. Mine was the Irish patriot and martyr, Robert Emmett, and it was "mighty poor stuff, sirs, mighty poor stuff".

Whether such things as I have related could occur or would be tolerated in this institution at the present day, I leave for you gentlemen to say, and I leave you also, without further comment, to pass upon the mental qualities of Mr. Love, of whom I will only observe that he was harmless and well-

disposed towards his associates, quite eloquent on his feet in debate, and reasonably proficient in class recitals. What became of him I do not know; my impression is that he died early. Nor do I know what became of Mr. Morgan. He was a bright fellow, but a poor student, often absent from class. My information is that he also has passed away. Mr. Head lived only a few years after graduation, and died, as I recall, at Gallatin, Tennessee. Nor do I know anything of Mr. Head's career. I have been unable, notwithstanding efforts in recent years, to find any trace of him. He was several years my senior, and I feel quite sure he is no longer in the land of the living.

Indeed, so far as I know or can ascertain, no member of the classes of 1870, except myself, now survives. Most of them I know have passed away, and those of whom I have no recent information were much older than I was, and in the course of Nature must now be either dead or in their dotage. It would serve no useful purpose here to name or discuss them. It suffices to say that many of them attained eminence in the profession, and left honorable records of work well done. I know of not one who, to use a vulgarism, "went to the dogs"—how could they, with the noble tutilage they received here?

I have not purposed, and do not purpose, young gentlemen, to lecture you, preach to you, or to give you unsought advice, although I would adventure, with your permission, to emphasize the advice given by Judge Green to our graduating class sixty years ago—to marry early and be careful of the "little things".

There is, however, one other kindly admonition I

would give you in conclusion, as you launch out upon your careers of professional labor, and it is this: That you be ever mindful of the evanescence of success and prosperity, on the one hand, as well as of gloom and misfortune on the other. For some of you, temporary success may come, so great as to unduly elate you; for others, there may be a dark and stormy sea—black clouds may lower over your course, and threaten to overwhelm and engulf you. Be not deceived by these portents, whether of good or evil. A sober and conservative prudence will avoid the pitfalls of the one, and a steadfast faith and courage will overcome the chilling handicaps of the other, and all will be well.

There is an ancient legend of a request by a youth of an old man for a motto, expressed in verse by the New England lawyer-poet, John Godfrey Saxe, which I leave with you as my final word:

"Give me a motto", said a youth,
To one whom years had rendered wise—
"Some pleasant thought or weighty truth
That briefest syllables comprise—
Some word of warning or of cheer
To grave upon my signet here.

'And, Reverend Father", said the boy,
"Since life, they say, is ever made
A web of mingled grief and joy,
Where sorrows come and pleasures fade
Pray let the motto have a range
Of meaning, matching every change."

"Sooth", said the sire, "Methinks you ask
A labor something over nice
That well a finer brain might task;

What think you, lad, of this device?—
Older than I, though I am gray—
'Tis simple, *This will pass away.*

"When, wafted on by Fortune's breeze,
In endless peace you seem to glide,
Prepare, betimes, for rougher seas
And check the boast of foolish pride.
Though smiling joy be yours today,
Remember, *This will pass away.*

"When all the sky is draped in black,
And, driven by tempestuous gales,
Your shuddering bark seems all a wrack,
Then, trim again your tattered sails.
To grim Despair, be not a prey,
Bethink you! *This will pass away.*

"Thus, O my son, be not o'er proud,
Nor yet cast down. Judge you aright;
When skies are clear, expect the cloud,
In darkness, wait the coming light.
Whatever be your lot today,
Remember, *This will pass away.*"

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